S. Hrg. 100-917

UMATILLA BASIN PROJECT ACT AND THE YAKIMA RIVER BASIN WATER ENHANCEMENT PROJECT

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 1613

TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO CONSTRUCT, OPERATE, AND MAINTAIN THE UMATILLA BASIN PROJECT, OREGON, AND FOR OTHER PURPOSES

S. 2322

TO AUTHORIZE CERTAIN ELEMENTS OF THE YAKIMA RIVER BASIN WATER ENHANCEMENT PROJECT, AND FOR OTHER PURPOSES

JUNE 28, 1988

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UMATILLA BASIN PROJECT ACT AND THE YAKIMA RIVER BASIN WATER ENHANCEMENT PROJECT

TUESDAY, JUNE 28, 1988

U.S. SENATE,
SUBCOMMITTEE ON WATER AND POWER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:10 p.m., in room SD-366, Dirksen Senate Office Building, Hon. Bill Bradley presiding.

OPENING STATEMENT OF HON. BILL BRADLEY, U.S. SENATOR FROM NEW JERSEY

Senator BRADLEY. The Subcommittee will come to order. The hearing this afternoon before the Subcommittee on Water and Power is to take testimony on two bills. The first bill sponsored by my colleague on the Committee, Senator Hatfield, is S. 1613 to authorize the construction of the Umatilla Basin Project in Oregon. The second, also sponsored by a colleague on the Committee, Senator Evans and cosponsored by Senator Adams, is S. 2322 to authorize elements of the Yakima River Basin Water Enhancement Project.

First, I'd like to acknowledge the extraordinary efforts made by all parties concerned with these two bills. I know the issues involved in both bills raise difficult questions of equity and responsibility, but both bills are this far in the legislative process. The fact that they are speaks well for the labors of both those here in the room and those who are not able to attend. In my personal review of the histories of both bills, I could not help but note the parallels. Both bills address problems that originated decades ago. Both address water supply issues where there is simply not enough water available to serve current or anticipated needs and both try to satisfy the needs and rights of native and non-native Americans.

I commend all of you for your efforts in trying to achieve a reconciliation of such divergent views. Copies of the two bills will be included in the record at this point. The hearing record will also remain open for two weeks to allow submission of additional views.

[The texts of the bills follow:]

II

100TH CONGRESS
1ST SESSION

S. 1613

To authorize the Secretary of the Interior to construct, operate, and maintain the Umatilla Basin Project, Oregon, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6 (legislative day, AUGUST 5), 1987

Mr. HATFIELD introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To authorize the Secretary of the Interior to construct, operate, and maintain the Umatilla Basin Project, Oregon, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Umatilla Basin Project Act".

SEC. 2. AUTHORIZATION OF PROJECT.

(a) For purposes of mitigating losses to anadromous fishery resources and continuing water service to the Hermiston, West Extension, Westland, and Stanfield Irrigation Districts, or any other entity which participates in the project water exchange, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, and Acts amendatory thereof and supplementary thereto), is authorized to construct, operate, and maintain the Umatilla Basin Project, Oregon, substantially in accordance with the report of the Secretary. The principal works of the project shall consist of—

(1) pumping plants and related diversion, conveyance, and distribution features;

(2) works incidental to the rehabilitation or modification of existing irrigation systems necessary to accomplish a water exchange;

(3) fish passage and protective facilities and other necessary mitigation measures;

(4) a program to monitor and regulate project operations; and

(5) a program to evaluate fishery resource mitigation measures.

SEC. 3. INTEGRATION AND OPERATION OF PROJECT.

Project facilities and features authorized by this Act shall be integrated and coordinated, from an operational standpoint, into other features of the Umatilla Project, and shall be operated in a manner consistent with Federal reclamation laws and water rights established pursuant to State law including the contract rights of water users. Prior to the initiation of project construction, the Secretary shall secure the necessary State and local permits and other authorities for the operation of project facilities, and through the conclusion of appropriate agreements with the State of Oregon, the relevant irrigation districts, and the Confederated Tribes of the Umatilla Indian Reservation provide for the monitoring and regulation of project related water supplies for the purposes herein identified.

SEC. 4. POWER FOR PROJECT PUMPING.

The Administrator of the Bonneville Power Administration, in accordance with provisions of the Columbia River Basin Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697), shall provide for project power needed to effect the water exchange with irrigation districts for purposes of mitigating anadromous fishery resources. The cost of power shall be credited to fishery restoration goals of the Columbia River Basin Fish and Wildlife Program.

SEC. 5. RATE FOR CONSTRUCTION CHARGES.

The rate used for computing interest during construction, and where appropriate, interest in the upaid balance of the reimbursable costs of the project shall be determined by the Secretary of the Treasury as of the beginning of the fiscal year in which funds for construction of the project are first disbursed, taking into consideration the computed average market yields on outstanding marketable obligations of the United States which are neither due nor callable for fifteen years from date of issue.

SEC. 6. FISHERY RESOURCE FACILITIES.

Facilities and any other project features which furnish fishery resource benefits in connection with the project shall be constructed, operated, and maintained in accordance with the Federal Water Project Recreation Act (Public Law 89–72, 79 Stat. 213), as amended, except that costs allocated to the mitigation of anadromous fish species shall be nonreimbursable.

SEC. 7. NON-FEDERAL OBLIGATIONS.

The Secretary shall negotiate and enter into agreements which specify appropriate non-Federal obligations of the operation and maintenance of project facilities authorized in this Act. The Federal responsibility for operation and maintenance shall be limited to those costs in excess of non-Federal obligations as established by such agreements.

SEC. 8. INTERIM FLOW AUGMENTATION.

Until the facilities authorized in this Act are constructed and in operation, and as an interim measure to provide flow augmentation of the Umatilla River for anadromous fishery resources, funds are authorized to be appropriated to the Secretary to provide for interim operation and maintenance of existing pumps or other facilities for the purpose of providing flow augmentation for anadromous fish, except that pumping power shall be provided in accordance with section 4 of this Act.

SEC. 9. NON-FEDERAL COSTS.

(a) CREDIT FOR NON-FEDERAL FISHERY RESOURCE IMPROVEMENTS.—The Umatilla Basin Project authorized by this Act is a Federal action to improve streamflow and fish passage conditions and shall be considered part of a comprehensive program to restore the Umatilla River basin anadromous fishery resource. Related fishery resource improvement facilities which utilize funding sources under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (94 Stat. 2697) and programs of the State of Oregon and other entities shall be consolidated in any final calculation of required cost sharing.

(b) TREATMENT OF NON-FEDERAL COSTS INCURRED IN IMPLEMENTING PROJECT FEATURES BEFORE APPROPRIATIONS.—Where a public or private entity shares in the cost of or constructs any feature of the project or portion thereof prior to the appropriation of funds for construction of such feature, the costs incurred shall be credited to the total amount of any cost sharing required for the project. The Secretary is authorized to accept title to facilities appropriate to the project without compensation and thereafter to operate and maintain such facilities.

SEC. 10. CONJUNCTIVE USE OF PUMPING FACILITIES.

When project pumping capacity is available in excess of that needed for fishery resource benefits, such capacity shall be available to lands eligible for service from the irrigation districts that participate in the project authorized in this Act: *Provided,* That such use shall be considered as secondary to the purpose of providing water for fishery resource purposes. Pumping power for this purpose shall be provided from the Federal Columbia River power system at charges applicable to the Federal reclamation projects in the Pacific Northwest, and the cost of power for such pumping shall be borne by irrigation districts receiving the benefit of such water, and the districts shall also bear that portion of the cost of transmitting power from the Federal Columbia River Power System to the project pumping facilities allocated to this use.

SEC. 11. REHABILITATION AND BETTERMENT AUTHORIZATION.

For purposes of encouraging water conservation and improvements to water supply systems of the irrigation districts participating in the project authorized by this Act, such districts shall be eligible to receive financial assistance, as deemed appropriate by the Secretary, under provisions of the Rehabilitation and Betterment Act of October 7, 1949 (73 Stat. 724), as amended.

SEC. 12. LEASE AND PURCHASE OF WATER.

The Secretary is authorized to acquire from willing parties land, water rights, or interests therein for benefit of fishery resources consistent with the purposes of this Act: *Provided,* That acquisition of water rights shall be in accordance with applicable State law. There is hereby authorized to be appropriated such sums as required to accomplish the purposes of this section.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) There is hereby authorized to be appropriated for construction of the Umatilla Basin Project the sum of $42,200,000 (April 1987 prices), plus or minus such amounts as may be required by reasons of changes in the cost of construction work of the types involved therein as shown by applicable engineering cost indexes and exclusive of facilities indicated in section 13(b) of this Act. There are also authorized to be appropriated such sums as may be required for the operation and maintenance of the project, including the monitoring and evaluation of project accomplishments.

(b) Related fish passage and protective facilities that are features of the Columbia River Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697) shall be consolidated into calculations of project costs and benefits: *Pro-*

vided, That the Secretary shall not request an appropriation of funds to construct any facilities which are approved to be or are constructed as part of the Columbia River Basin Fish and Wildlife Program.

○

II

100TH CONGRESS
2D SESSION

S. 2322

To authorize certain elements of the Yakima River Basin Water Enhancement Project, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 25, 1988

Mr. EVANS (for himself and Mr. ADAMS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To authorize certain elements of the Yakima River Basin Water Enhancement Project, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION FOR EARLY IMPLEMENTATION PROJECTS.

(a) That for purposes of protection and enhancement of fish and wildlife, satisfaction in significant part of the in-stream flow and irrigation rights of the Yakima Indian Nation reserved under the Treaty of 1855 with the Yakimas, providing supplemental irrigation to presently irrigated lands, and water conservation, the Secretary of the Interior (hereafter, the Secretary) acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplementary thereto) and consistent with the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697) is authorized to design, construct, operate, and maintain the following facilities:

(1) modification of existing radial gates at Cle Elum Dam; a reregulating reservoir to increase water-use efficiency of the Roza Division; facilities to automate and otherwise improve canal operations of the Sunnyside Division; facilities to automate the headgate, wasteways, and trashrack of the Chandler Power Canal to maintain operating controls for the Kennewick Irrigation District;

(2) facilities to automate and otherwise improve canal operations of the Wapato Indian Irrigation Project; and

(3) electric pumping facilities to replace existing hydraulic pumps at the Chandler Diversion and at facilities within the Sunnyside Division.

(b) The Secretary is authorized to accept funds from any entity, public or private, to design, construct, operate, and maintain facilities authorized by this Act.

SEC. 2. AUTHORIZATION FOR ADDITIONAL STORAGE AT THE BUMPING LAKE PROJECT.

(a)(1) That for purposes of protection and enhancement of fish and wildlife, satisfaction in significant part of the instream flow and irrigation rights of the Yakima Indian Nation reserved under the Treaty of 1855 with the Yakimas, providing supplemental irrigation to presently irrigated lands, water conservation, and to the extent compatible with the foregoing purposes, flood control, and recreation, the Secretary, acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof and supplementary thereto) and consistent with the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697) is authorized to construct, operate, and maintain the Bumping Lake Enlargement storage facility not to exceed 458,000 acre feet and substantially in accordance with the recommended plan presented in the Bumping Lake Enlargement Yakima Project, Washington, joint feasibility report dated August 23, 1979, as updated and revised pursuant to section 2(a)(3).

(2) The principle works of the Bumping Lake Enlargement shall consist of—

(A) a replacement dam downstream from the presently existing dam structure; and

(B) other facilities as may be required for the operation of the replacement dam.

(3) The Secretary is directed to update and complete all project reports including the joint feasibility report and environmental impact statement in accordance with the purposes of this Act and shall submit such reports to Congress within three years of the date of enactment of this Act.

(4) This Act constitutes an affirmative authorization by Congress for construction in a navigable water course of the United States.

(b) The Secretary shall not undertake the construction of the Bumping Lake Enlargement until completion of a plan to mitigate and enhance resources including, but not limited to—

(1) fisheries resources;

(2) wildlife resources;

(3) old growth forest resources; and

(4) recreational resources

that will be impacted by the construction and operation of such facility. Such mitigation and enhancement measures shall be implemented concurrently with construction of the enlarged storage facility. Such plan shall be undertaken in consultation with the United States Forest Service, Washington Departments of Ecology, Wildlife and Fisheries, the Fish and Wildlife Service, the Pacific Northwest Power Planning Council, and the Yakima Indian Nation. Upon completion of said mitigation and enhancement plan notice shall be given to the public with opportunity for review and comment.

(c) The Secretary shall not undertake construction of the Bumping Lake Enlargement or initiate delivery of water for the purposes of irrigation from the Bumping Lake project until—

(1) completion of the Yakima Water Study authorized by section 3 of this Act; and

(2) the Secretary enters into appropriate agreements for the implementation of the recommendations made by the Yakima Water Study.

SEC. 3. YAKIMA RIVER BASIN CONSERVATION AND WATER USE EFFICIENCY STUDY.

(a) For the purposes of improving the availability and reliability of water supplies for irrigation and the protection and enhancement of the fish and wildlife resources of the Yakima River Basin and in cooperation with appropriate Federal, State, and local entities including, but not limited to, local irrigation districts, the Washington Departments of Ecology and Agriculture, the Yakima Indian Nation, and other interested parties, the Secretary shall undertake the Yakima River Basin Conservation and Water Use Efficiency Study (hereinafter, the Yakima Water Conservation Study) to investigate the feasibility of reducing or otherwise altering the diversion of irrigation water supplies provided by the existing Yakima project and the Yakima Enhancement Project and delivered pursuant to contracts with the Secretary.

(b) The Yakima Water Conservation Study shall include—

(1) an analysis of physical, structural and operational methods to improve water use efficiency including, but not limited to, the lining or piping of canals and laterals, vegetation management, rotation of water use, conjunctive management of surface and groundwater resources, underground storage, improved on-farm irrigation facilities and water management, the location of points of diversion and times of diversions, and the reintroduction of return flows; and

(2) an analysis of the institutional and economic incentives that may be utilized to increase conservation and the efficient use of water or otherwise alter the diversion of water in the Yakima River Basin including, but not limited to, water banking, payment for the temporary diversion of water, and the ability to implement such methods under Washington State law. Such analysis shall incorporate to the greatest extent possible the results and recommendations of the Washington State Water Use Efficiency Study.

(3) The analysis of each method shall include an estimate of—

(A) the cost-effectiveness of implementing the proposal including a comparison of the costs associated with each method and the incremental costs associated with the water supplied through the Bumping Lake Enlargement;

(B) the extent to which the method contributes to the availability and reliability of the Yakima River Basin water supply, including enhanced irrigation water supplies and improved water supplies for anadromous and resident fisheries;

(C) the timeliness of implementation;

(D) the acceptability of the method from social, environmental, and institutional perspectives; and

(E) the impact on the operation of the Yakima River Basin Project.

(4) The study shall also contain the recommendations of the Secretary as to measures necessary to replace incidental fish and wildlife values foregone as a result of the implementation of water use efficiency measures.

(c) The Secretary shall transmit the study along with recommendations for implementation of conservation and water use efficiency measures to the Committee on Energy and Natural Resources of the Senate, and the Committee on Interior and Insular Affairs of the House of Representatives, and the Governor of the State of Washington and the Pacific Northwest Power Planning Council within three years after the date of enactment of this Act. For each recommendation for implementation, the Secretary shall substantiate the technical and financial feasibility of the proposal.

SEC. 4. IMPLEMENTATION OF THE YAKIMA CONSERVATION AND WATER USE EFFICIENCY PROGRAM.

(a) Subject to the appropriations of funds, and the finding required in section 12(a) of this Act—

(1) one year after the submittal to Congress of the study authorized in section 3 of this Act, the Secretary is authorized to undertake the water use efficiency measures as recommended for implementation in the study where such measures are shown to be financially feasible: *Provided,* That prior to the implementation of the recommendations of the study related to water diversion works or distribution systems, or portions thereof, the Secretary shall enter into contracts with the non-Federal entities owning, operating, and maintaining such facilities providing for the long term operation and maintenance of system improvements constructed pursuant to this section: *Provided further,* That prior to implementation of the recommendations

of the study related to on-farm irrigation water management including improvement of related laterals, the Secretary shall have pursued completing voluntary cooperative agreement with the respective entities or groups of owners and in consultation with the appropriate irrigation district or the canal company providing for the implementation of said recommendations; and

(2) the Secretary is authorized to acquire on a temporary or a permanent basis, water rights from willing sellers, and to allocate water savings resulting from the acquisition of water rights to supplemental irrigation of off-reservation lands currently receiving deliveries of irrigation water.

SEC. 5. FULFILLMENT OF YAKIMA INDIAN NATION WATER RIGHTS.

(a) Upon completion of the facilities authorized in this Act—

(1) the Wapato Indian Irrigation Project is hereby expanded to include those lands within the boundaries of the Yakima Indian Reservation which are generally depicted on the map entitled "Wapato Indian Irrigation Project, Modified" dated , 1988, and numbered , and is on file in the offices of the Secretary and the Yakima Indian Nation;

(2) the Secretary shall provide deliveries of water to the Wapato Indian Irrigation Project sufficient to meet the full irrigation needs of the Wapato Indian Irrigation Project as modified in subsection (a)(1). All waters provided for the beneficial use of the Yakima Indian Nation and its members within the boundaries of the Wapato Indian Irrigation Project shall—

(A) be available for irrigation purposes or for other purposes for which the Reservation was established;

(B) be delivered on a nonproratable basis; and

(C) shall have a priority date consistent with the date on which the Yakima Indian Reservation was established.

(3) The Secretary is authorized to design, construct, operate and maintain conveyance facilities sufficient to provide deliveries of water pursuant to subsection (a)(2).

(4) Operation and maintenance charges attributable to lands within the boundaries of the Wapato Indian Irrigation Project title to which is vested in the Yakima Indian Nation or its members or held in trust by the Secretary for the benefit of the Yakima Indian

Nation and its members shall be nonreimbursable and nonreturnable.

(5) The Yakima Indian Nation is authorized to—

(A) contract with any other entity, on a voluntary basis, to limit or forego diversions to the Wapato Indian Irrigation Project, or

(B) to limit or forego diversion of water to the Wapato Indian Irrigation Project that benefit lands held by the Yakima Indian Nation or its members to allow for increased instream flows.

(b) Notwithstanding the provisions of subsection (c) of the Act of August 31, 1964 (Public Law 88–540; 25 U.S.C. 608(c)), and of section 203 of the Act of January 12, 1983, (Public Law 97–459; 96 Stat. 2517; 25 U.S.C. 2202), the Secretary is authorized to acquire and hold in trust pursuant to section 5 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465), for the Yakima Indian Nation land and interests in lands within the Yakima Indian Reservation presently held by the grantor in fee simple.

SEC. 6. OPERATION OF YAKIMA BASIN PROJECTS.

(a)(1) Except as provided in subsection (b), the facilities authorized by this Act and fish passage facilities authorized by the Acts of August 17, 1984 (98 Stat. 1933) and August 22, 1984 (98 Stat. 1369), shall be considered features of the Yakima River Basin Water Enhancement

Project (hereinafter, Yakima Enhancement Project), and their operation and maintenance shall be integrated and coordinated with other features of the existing Yakima Project. As appropriate, the Secretary shall enter into agreements to provide for the operation and maintenance of such facilities. The Secretary shall insure that such facilities are operated in a manner consistent with the treaty rights of the Yakima Indian Nation, Federal reclamation law, and water rights recognized pursuant to State law, including the valid contract rights of irrigation users.

(2) The Roza reregulating reservoir shall become a feature of the Roza Division. Water savings resulting from construction and operation of the Roza reregulating reservoir shall be available for use as supplemental irrigation water for currently developed lands within the boundaries of the Roza Division.

(3) The facilities to automate and otherwise improve canal operations of the Sunnyside Division shall become features of the Sunnyside Division. Water savings resulting from construction and operation of such facilities shall be allocated to the protection and enhancement of fish and wildlife.

(4) The modified radial gates at Cle Elum Dam shall become a feature of the existing Yakima Project. Additional water resulting from the modification of the radial gates shall be available in accordance with the Early Implementation

Report dated February 1987. The Secretary shall operate and maintain such facilities in accordance with the existing Yakima Project.

(5) The Bumping Lake Enlargement shall become a feature of the Yakima Enhancement Project. The Secretary shall operate and maintain such facility in accordance with the purposes of this Act and shall allocate water stored in the Bumping Lake Enlargement according to the recommendations contained in the joint feasibility report referred to in section 2(a)(1) and 2(a)(3) of this Act.

(b) The facilities to expand deliveries of water, and to automate and otherwise improve canal operations of the Wapato Indian Irrigation Project shall become features of the Wapato Indian Irrigation Project. Water savings resulting from construction and operation of such facilities shall be available to the Yakima Indian Nation for irrigation purposes, for the protection and enhancement of fish and wildlife, and for other purposes for which the reservation was established. Except as provided for under section 5 of this Act, design, construction, operation and maintenance costs related to such facilities shall be reimbursable and returnable according to the provisions of the Leavitt Act (Act of July 1, 1932 (47 Stat. 564)).

(c) The Secretary shall operate and maintain the existing Federal Chandler and Roza powerplants to help meet established instream flows and in a manner that provides priority for protection and enhancement of fish and wildlife. The Administrator of the Bonneville Power Administration shall make available power and energy from the Federal Columbia River Power System to the Secretary to meet contractual obligations entered into by the Secretary for the delivery of power and energy from the Chandler and Roza powerplants. Except as otherwise provided by this section, the Secretary shall offer to amend, without imposing any other requirement as a condition to such amendment, all existing contracts for the sale of power and energy from the Chandler and Roza powerplants to relieve any outstanding obligations for the repayment of construction costs for such powerplants allocated to irrigation.

(d) The Secretary shall allocate water savings resulting from installation of electric pumping facilities at the Chandler Diversion and at facilities within the Sunnyside Division to instream flows. The Administrator of the Bonneville Power Administration shall provide the additional power and energy that is required from the installation of the electric pumping facilities to the Secretary for operation of electric pumps at the Chandler Diversion and at facilities within the Sunnyside Division.

(e) The Secretary shall, in consultation with the State of Washington, the Pacific Northwest Electric Power Planning

Council, and the Yakima Indian Nation, establish instream flows adequate to protect and enhance fish and wildlife for all reaches of the regulated portion of the Yakima River. Upon completion of the facilities authorized pursuant to this Act, the Secretary shall operate the Yakima Enhancement Project in a manner which maintains established instream flows. Upon enactment of this Act and until completion of the facilities authorized by this Act, the Secretary shall operate the Yakima Enhancement Project to maintain a minimum instream flow of two-hundred cubic feet per second at the Sunnyside Diversion gaging station.

SEC. 7. INTERIM SUBORDINATION OF NACHES HYDROELECTRIC PROJECT.

(a)(1) Not less than ninety days following enactment of this Act, the Administrator of the Bonneville Power Administration (hereinafter, the Administrator), and the Secretary shall enter into a Memorandum of Agreement (hereinafter, MOA) with the Pacific Power and Light Company, the Yakima Indian Nation, the City of Yakima, the Wapatox Ditch Company and other entities or persons with whom Pacific Power and Light Company has an existing contract to provide water for irrigation purposes, for the operation and maintenance of the Naches and Naches Drop Hydroelectric Projects (hereinafter, Projects) in a manner that provides priority for protection and enhancement of fish and wildlife until such time as the construction of the Bumping Lake Enlargement Project is completed.

(2) The Pacific Power and Light Company shall operate and maintain the Projects in accordance with the MOA: *Provided,* That nothing herein shall limit or affect the delivery of—

(A) flows up to twenty cubic feet per second through the Wapatox power canal needed by the City of Yakima to maintain the present quality and quantity of water for domestic uses; or

(B) flows needed by the Pacific Power and Light Company to maintain its present contractual deliveries of water to the Wapatox Ditch Company or any other person or entity for irrigation purposes.

(b)(1) To the extent operation and maintenance of the Naches and Naches Drop powerplants in accordance with the provisions of the MOA provided for in subsection (a) results in a reduction of power and energy generation at said Projects, the Administrator shall make available as compensation to Pacific Power and Light Company equivalent power and energy from the Federal Columbia River Power System for such time as power generation is subordinated for the purposes of fish and wildlife in the manner provided for in the MOA: *Provided,* That the delivery of power and energy to Pacific Power and Light Company shall be in a manner approximating the power and energy generation reduction at the Projects.

(2) To the extent that the MOA requires the construction of capital improvements at the Projects to accomplish the temporary subordination of the powerplants for a fish and wildlife priority or operation of the powerplants to fulfill the requirements of the MOA results in increased operating costs of the powerplants, the Administrator shall also fully compensate Pacific Power and Light in either money or electric power and energy equivalent thereto calculated at the PF-87 Preference Rate or its successor.

(c) In the event that the MOA is not agreed to within one hundred and twenty days after the enactment of the Act, the Secretary is authorized to acquire and to operate and maintain the Naches and the Naches Drop Hydroelectric generating facilities. The Secretary shall operate the projects to help meet established instream flows and in a manner that provides priority for protection and enhancement of fish and wildlife. The Administrator shall make available power and energy from the Federal Columbia River Power System to the Secretary to meet contractual obligations entered into by the Secretary as consideration for acquisition of the projects.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There is hereby authorized to be appropriated to the Secretary, at July 1987 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations of construction cost indexes applicable to the type of construction involved herein—

(a) $23,400,000 for planning, design, and construction of early implementation elements of the Yakima Enhancement Project authorized in section 1(a)(1);

(b) $20,000,000 for the planning, design, and construction of Wapato Improvement facilities authorized in section 1(a)(2);

(c) $158,000,000 for the planning, design, and construction of the Bumping Lake Enlargement facilities authorized in section 2;

(d) $2,000,000 for the Yakima Water Conservation Study authorized in section 3;

(e) $120,000,000 for the implementation of the water use efficiency measures authorized in section 4;

(f) $ for the planning, design, and construction of the Wapato Indian Irrigation Project facilities authorized in section 5;

(g) $3,450,000 for the installation and operation of electric pumping facilities authorized in section 1(a)(3); and

(h) such sums as may be required—

(1) for the operation and maintenance of the three vertical feet enlargement of Cle Elum Lake;

(2) for the operation and maintenance of facilities authorized by section 1(a)(2) and section 5;

(3) for that portion of operation and maintenance of other facilities authorized by this Act determined by the Secretary to be a Federal responsibility pursuant to the agreements specified in section 6;

(4) for the completion of the feasibility studies authorized by section 11; and

(5) for the acquisition of the Naches and the Naches Drop hydroelectric facilities authorized in section 7.

SEC. 9. COST-SHARE AGREEMENT.

(a) The construction of facilities authorized by this Act shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary to fund 35 per centum of the total construction cost of such facilities during such period of construction. The construction of facilities or other expenses incurred to enhance and improve the fish and wildlife resource in the Yakima River Basin by the Bonneville Power Administration shall be considered as part of the local contribution for purposes of the cost sharing agreement.

(b) If the State of Washington, the Yakima Indian Nation, or any other entity, public or private, prior to the providing of an appropriation of funds to the Secretary to construct the Yakima Enhancement Project, shares in the costs of or constructs any physical element of that project, the costs incurred by the State, the Yakima Indian Nation, or any other entity in the construction of such elements shall be credited to the total amount of any costs to be borne by the State, the Yakima Indian Nation, or any other entity as contributions toward payment of the cost of the Yakima Enhancement Project; except that no such credit shall be given for any element constructed by the State, the Yakima Indian Nation, or any other entity unless the element has been approved by the Secretary prior to its construction. The Secretary shall grant such approval, when requested by the State or other entity, if the Secretary determines that the element proposed for construction would be an integral part of the Yakima Enhancement Project.

SEC. 10. REIMBURSABLE AND NON-REIMBURSABLE COSTS.

(a) Design, construction, operation and maintenance costs of facilities that are features of the Yakima Project allocated to fish and wildlife shall be reimbursable and returnable according to the provisions of the Federal Water Project Recreation Act (79 Stat. 213), as amended: *Provided*, That design, construction, operation and maintenance costs of

Yakima Project facilities related to anadromous fish shall be nonreimbursable and nonreturnable.

(b) Except as provided in section 5 and section 6(b), design, construction, operation and maintenance costs of facilities authorized by this Act allocated to irrigation and which are determined by the Secretary to be an irrigation obligation shall be reimbursable and returnable according to the provisions of section 9(d) of the Reclamation Project Act of 1939 (53 Stat. 1187). The Secretary shall offer to amend existing irrigation repayment contracts, without imposing any other requirement as a condition to such amendment, to provide for repayment of the irrigation construction costs of facilities authorized by this Act over a period of not more than forty years exclusive of any development period authorized by law.

SEC. 11. STUDIES AUTHORIZED.

(a) The Secretary, as part of the study authorized by the Act of December 28, 1979 (93 Stat. 1241), is directed to conduct a feasibility study of the following potential elements—

(1) Kittitas Valley irrigation system improvements;

(2) consolidation of the Selah-Moxee Irrigation District, Union Gap Irrigation District, Moxee Ditch Company, and Hubbard Ditch Company diversions

from the Yakima River for delivery from the Roza Canal;

(3) development of groundwater resources within the Roza Division for a supplemental irrigation water supply; and

(4) construction within the boundaries of the Yakima Indian Reservation of storage facilities and groundwater pumping facilities for the use and benefit of the Yakima Indian Nation: *Provided*, That the functions of the Bureau of Reclamation under this paragraph shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (Public Law 93–638, 88 Stat. 2203; 25 U.S.C. 450) to the same extent as if performed by the Bureau of Indian Affairs.

(b) The Secretary shall complete the feasibility study and report the conclusions of the study to the Congress within three years following enactment of this Act.

SEC. 12. CONDITIONS OF AUTHORIZATION PERTAINING TO WASHINGTON STATE LAW AND THE YAKIMA INDIAN NATION.

The Secretary shall not undertake construction of the facilities authorized in this Act until—

(a) the Secretary finds that construction of the facilities and allocations of water authorized in this Act are consistent with the laws of the State of Washington;

(b)(1) a determination has been made by the Yakima Indian Nation that the delivery of water to the Yakima Indian Reservation and the maintenance of instream flows pursuant to this Act will satisfy the needs of the Yakima Indian Nation for deliveries of water from off-reservation water supplies and the maintenance of instream flows from Yakima Project water supplies; and

(2) a stipulation has been filed by the Yakima Indian Nation, in the appropriate court, that, upon completion of the facilities authorized by this Act, including the construction of the Bumping Lake Enlargement storage facility, the maintenance of established instream flows, and the delivery of water pursuant to this Act, it will not assert additional claims—

(A) to off-reservation water supplies for delivery of water to the Yakima Indian Reservation; and

(B) to water stored in facilities that are features of the Yakima River Basin Water Enhancement Project for instream flows necessary for the protection and enhancement of fish and wildlife.

SEC. 13. SAVINGS PROVISIONS.

Except as specifically provided in section 12(b), nothing in this Act shall be construed to—

(a) affect or modify any treaty or other right of the Yakima Indian Nation;

(b) authorize the appropriation or use of water by any Federal, State, or local agency, the Yakima Indian Nation, or any other entity or individual;

(c) affect the rights or jurisdictions of the United States, the States, the Yakima Indian Nation, or other entities over waters of any river or stream or over any groundwater resource;

(d) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States;

(e) alter, establish, or affect the respective rights of States, the United States, the Yakima Indian Nation, or any person with respect to any water or water-related right; or

(f) alter, diminish, or abridge the rights and obligations of any Federal, State, or local agency, the Yakima Indian Nation, or other entity, public or private.

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Senator **Bradley**. Would the distinguished Senator from Oregon like to make an opening statement?

Senator **Hatfield**. Mr. Chairman, I would ask unanimous consent to have my formal statement placed in the record and I would like to merely summarize.

Senator **Bradley**. Your statement will be placed in the record in full.

STATEMENT OF HON. MARK O. HATFIELD, U.S. SENATOR FROM OREGON

Senator **Hatfield**. Mr. Chairman, about ten years ago I presided over a public hearing in Pendelton, Oregon on this particular subject and I must say that in my 38 years in public office, I don't believe I have participated in a more contentious argumentative hostile kind of hearing. I really felt that there were times when we might have to call the marshals in to maintain order. You can imagine my surprise then, when last February this year we held a hearing up in Pendelton, Oregon on this subject and there sat the irrigators, there sat the representatives of the Indian tribe, a complete agreement on having resolved the differences that had existed for so long.

This bill represents not only the support of the contending parties that have a great interest in maintaining a viable agricultural base in that part of the state, but also to fulfill the Federal government's obligation of treaty rights to the American Indians. I am pleased to say that Chambers of Commerce have joined in support of this bill, the Tri-State Steel Headers, the State Wildlife, Fish and Wildlife, the Northwest Planning Council, Supervisor of the Umatilla National Forest, just to name a few, and it indicates again what people of good will and faith and persuasion can accomplish when they sit down to resolve their problems.

Mr. Chairman, I'm happy to see this hearing today and I'd like to thank you not only for presiding at this hearing, but for providing the opportunity to have the field hearing last February.

Mr. Chairman, I have a letter from Governor Goldschmidt of Oregon, who would have liked to have been here in person to express his trying support for this bill and I would like to have that entered in the record at this time.

Senator **Bradley**. It will be put in the record.

[The prepared statement of Senator Hatfield and letter from Governor Goldschmidt follow:]

SENATOR MARK O. HATFIELD
COMMITTEE STATEMENT
COMMITTEE ON ENERGY AND NATURAL RESOURCES
S. 1613, UMATILLA BASIN PROJECT ACT
JUNE 28, 1988

Senator Bradley, on behalf of the Confederated Tribes of the Umatilla Indian Reservation and the residents of northeastern Oregon, I am grateful for your interest in this project and the scheduling of today's hearing. As you know, the Subcommittee held a field hearing on this bill in Pendleton, Oregon, last February, and today's hearing is one more important step toward enactment of this needed fisheries enhancement project.

The Umatilla Basin Project Act proposes a solution to a very delicate situation that has developed over the years between the Confederated Tribes of the Umatilla Indian Reservation and the irrigation districts in the Umatilla River Basin.

The bill is a product of years of effort to develop a pragmatic, least-cost approach to meeting the Federal Government's treaty obligations in the Basin without devastating the area's valuable agricultural economy.

As I look over the witness list for today's hearing on S. 1613, I am struck once again by the strong coalition that has developed for this project within the local communities over the past decade. Senator Bradley, over ten years ago I presided at the first public hearing on this project. You may be surprised to learn that that hearing was probably the most argumentative and contentious hearing I have ever attended in my 21 years in the Senate. At the conclusion of that hearing, I remember thinking to myself that the two sides - the Tribes and the irrigators - would never be able to agree on a compromise to their problem, and that the courts, not the Congress, would end up resolving the issue.

With that little bit of history in mind, you can imagine how surprised I was by last February's field hearing. Over the space of ten years, a consensus had been reached and there was unanimous support by all factions on the solution proposed in S. 1613. I think this unified coalition provides evidence of the innovative spirit of the affected parties in the Umatilla Basin, and their desire to work together to find a solution to their problem.

To me, however, this legislation represents much more than just a potential solution to a longstanding water resources problem. More importantly, it is a model product of consensus-building between parties with divergent interests - a compromise the likes of which I have seen few times in my years in public office. In fact, I think the Administration would be wise to take a good look at the process which has culminated in this legislation and use it as a model in other water resource disputes in the West.

Finally, Mr. Chairman, I would like to emphasize that this bill enjoys strong support from a wide variety of organizations. Along with the Confederated Tribes and the local irrigation districts, the project is strongly supported by Governor Goldschmidt, the Oregon Department of Fish and Wildlife, the Northwest Power Planning Council, the Supervisor of the Umatilla National Forest, the Tri-State Steelheaders and local chambers of commerce, to name just a few.

At this time, Mr. Chairman, I would like to have a statement by Governor Goldschmidt inserted at the appropriate place in the hearing record. The statement strongly supports enactment of S. 1613. It is my understanding that the Governor would have been here with us today, but is vacationing with his family this week.

Once again, Senator Bradley, thank you for your interest in this legislation.

NEIL GOLDSCHMIDT
Governor

OFFICE OF THE GOVERNOR
STATE CAPITOL
SALEM, OREGON 97310-1347

June 28, 1988

The Honorable Mark Hatfield
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510-6150

Subject: S.1613 Authorizing Umatilla Basin Project

Dear Mark:

I regret that I am unable to attend the hearing on S.1613 today, but I would like to submit a statement for the record. I strongly support this bill authorizing the Umatilla Basin Project in Oregon, and appreciate your leadership in sponsoring this legislation.

The State of Oregon strongly urges Congress to authorize the Umatilla Project by passing S. 1613. The state has supported the ongoing work on the Umatilla Project through two administrations. This is the top priority water project in Oregon. Our Water Resources Commission, on June 24, 1988, approved a revised comprehensive basin plan for the Umatilla Basin following over a year of study and extensive public involvement. The new plan strongly recommends and supports the project. We now need to take the concrete step of funding the solution all have worked so hard to reach.

The Confederated Tribes of the Umatilla Basin were promised continued rights to fishing in the treaty of 1855. Construction of the original reclamation project in the basin nearly eliminated salmon and steelhead fisheries. This new project will go a long way toward correcting over 70 years of failure to meet those national treaty obligations. Developing this project may avoid the contentious legal issues of unquantified reserved water rights.

The restoration of anadromous fisheries is of tremendous importance to the entire Northwest. State agencies have worked with the Northwest Power Planning Council to develop a strategy for mitigating the immense impact that Columbia River power development has had on fish resources. Fishery benefits from the Umatilla Project can be a major part of that program. It is an investment that our citizens support.

The Honorable Mark Hatfield
United States Senate
June 28, 1988
Page 2

In spite of the emphasis on fisheries it is equally important to recognize and support the valuable agricultural community in the Umatilla Basin. The economy of the Umatilla Basin depends on irrigated agriculture which benefits from the current federal reclamation projects. Umatilla County is a leading producer of many Oregon crops. Preserving this agricultural land base is also essential to the state.

Years of effort to develop an equitable and least cost solution to the competing water demands have resulted in a proposal that can meet both tribal and agricultural needs. The proposal is fully consistent with the new direction of the Bureau of Reclamation to develop smaller scale, management-oriented solutions. I believe the project is not only economically justified, but socially and morally essential. I urge Congress to authorize and fund the Umatilla Project. State and local participants have done everything we can to prepare for this final federal action. We urge you to act promptly.

I appreciate the attention of the subcommittee to this legislation and look forward to working further with you on this. Please let me know how we can assist further.

Sincerely,

Neil Goldschmidt,
Governor

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Senator **Hatfield**. I want to thank you again, and I'm ready to hear from our constituents, rather than taking up more time from this part of the podium.

Senator **Bradley**. Thank you, Senator Hatfield.

Senator Evans, would you like to make an opening statement?

STATEMENT OF HON. DANIEL J. EVANS, U.S. SENATOR FROM WASHINGTON

Senator **Evans**. Thank you, Mr. Chairman. There very much is a parallel, I think, with the bill that Senator Hatfield is interested. Perhaps there is something about the Northwest air or water or whatever it is that has enabled people to try to work together. The Yakima Valley is one of the agriculturally richest parts of the Northwest. It once was a river which was an equally rich river in terms of its salmon runs. We are increasingly short of adequate water to handle both agricultural and in-stream flows for fish and that has resulted over the years in very contentious court cases some of which are still pending and also a decision to people several years ago to try to work more closely together in what was a very successful program under early implementation where some improvements were made in the river and we have already seen the benefits of that in terms of a turnaround in fish runs, the beginning of a long road back toward that kind of harvest.

And, the bill we have in front of us today, I think reflects or will reflect by the time we're through a very very significant move forward by a large number of people. Irrigators, fish and wildlife agencies from the State, the Yakima Indian nation, a number of others who have all worked very hard to try to see if the varying water needs and water rights of all of these sometimes competing interests could somehow be resolved and I think we are very close to that resolution and I commend all of those who are here and the many hundreds of people who aren't here but who worked very hard on task forces and who came together. They got to know each other across the table, instead of arguing with one another and I think the end result will prove to be a remarkably good one.

Senator **Bradley**. Thank you very much, Senator Evans.

Our first witness is Senator Adams. Welcome to the Subcommittee, Senator Adams. We are anxious to hear your testimony.

STATEMENT OF HON. BROCK ADAMS, U.S. SENATOR FROM WASHINGTON

Senator **Adams**. Thank you very much, Mr. Chairman. I'm here in support of S. 2322, which has been in the news by Senator Evans and myself.

Mr. Chairman, I think it's important before anything else that I extend both my congratulations and that I commend Senator Evans and the many hundreds of people that have been brought together in this state to try to settle the problem of the Yakima River and the Yakima River Basin. There have been countless meetings. All of the groups have been called together to develop this legislation and it nearly died several times.

Senator Evans has resurrected it. I've tried in the last two years to assist in that because there are contentious issues that have been in that Valley for many years involving major Indian interests, the state interests in settling by legislation, in particular, rather than going through long involved court proceedings, the competing rights in this Valley.

The irrigators are involved. The environmentalists are involved. I am hopeful that this vehicle that we have created will be the basis for the necessary discussions and the settlement of this issue, because Mr. Chairman, we have throughout the entire country now a drought problem and this problem came upon us in the Pacific Northwest several years ago and we have just been fortunate this year that we have had some rain which prevented a major disaster from continuing.

We need the water flows, as were mentioned by Senator Evans, for both purposes, for the irrigation of a very fertile valley and for the maintenance, for ancestral Indian rights and for the people of this state, in general, because we fish in common, of the fish rights in this river and that requires a water flow. Congressional offices, the Yakima Tribe, the irrigation districts, the farmers, have all been meeting and now we hope that this apportionment can be made.

Mr. Chairman, we know that this is based on allocation of water in short years. That problem has pretty well been resolved now, and therefore, we were able to bring this bill before you. It's been a cooperative venture in the last two months. It is also in process and I'm hopeful that that will come out in the course of the hearing, because this hearing is terribly important to us, Mr. Chairman, and the mechanism for satisfying the claims of the Yakima Indian nation together with those of the State and of the irrigators and the people in the area.

I particularly want to commend the Yakima Indian nation for their efforts in attempting to settle some very difficult problems that they have had and then try to move this forward. There is one issue that remains, Mr. Chairman. It is substantially unresolved, but we hope it will be resolved in the course of this hearing and that's the proposed enlargement of Bumping Lake. I stated before and I've joined with Senator Evans on this to accept the inclusion of a Bumping Lake enlargement under certain conditions.

The situation does continue to trouble me but if there can be a genuine consensus among the parties that are involved in this valley, then I will take their acceptable conclusion and will work to pass it. We are hopeful that everyone, fishmen and growers alike, can establish the stable water supply. But, it is very desirable that the interests of all of the parties and I mention Bumping Lake because it is a water supply system, be considered in this legislation.

I know Senator Evans will be supplying the Committee in the course of its markup with specific information on it. Mr. Chairman, I can't overemphasize the important part in this process that this Committee has to play because our parties are all doing the tradeoffs, but in committees such as this with the expertise it has, the reputation for fairness that it has, it is capable of assisting us in this and I think that is a legislative duty, as well as simply the consensus that may be arrived at, because at that point we saw the nation's problems and a comprehensive water solution in this basin leads to the same kind of solutions elsewhere.

So, Mr. Chairman, I want to thank you for having this hearing and I'd like to thank you, not just for the citizens of the State of Washington, but also Mr. Chairman, this is a Western problèm that is very severe and it is moving into the Midwest now. And the manner in which we store and use our water, particularly in very difficult years such as we're having now, which we in the West referred to it as our worst water years, the Midwest will now refer to them in that way too, is a major way of preserving the natural resources of the country and utilizing them in an excellent fashion.

I thank you, Mr. Chairman.

Senator **Bradley**. Thank you very much, Senator Adams, for your testimony and your interest to come to the Subcommittee and share your views with us. I have no questions of Senator Adams.

Senator Hatfield.

Senator Evans.

Thank you very much, Senator Adams.

Our next witness is Hon. Sid Morrison, House of Representatives. Welcome to the Subcommittee, Congressman.

STATEMENT OF HON. SID MORRISON, U.S. REPRESENTATIVE FROM WASHINGTON

Mr. **Morrison**. Thank you, Mr. Chairman. I've been pleased to be a guest here before. Your Subcommittee has many issues of importance to us in the great northwest. The legislation before you, Mr. Chairman, has evolved significantly since its introduction in April and I sense the fine hands of Senator Evans and Senator Adams in this process, as we use hearings and deadlines and dates to attempt to bring parties together.

The Senate Bill is the latest in a long line of bills introduced over the years to deal with the fact that the waters of the Yakima River are overappropriated and in dry years there's not enough water in the system to meet the demands placed on it, a common story that you have heard today.

I occasionally have to go back and remind myself why we are doing this. The purpose of the legislation is to firm up the supply of the irrigation water for those districts that had their water supply cut back in those water short years, increase the level of in-stream flows for fish production and provide additional irrigation water for the development of the Yakima Indian nation and in the process resolve the many conflicting claims for water from the Yakima River System.

Although these goals are easily stated, they unfortunately have not been easy to achieve.

Senate 2322 was introduced despite the reservations of many of the interested parties, with the understanding that it was not intended to be the solution to the problem, but only a starting point for discussions and what that solution should be. It truly has been that and since the bill was introduced, there have been numerous meetings and hours of discussions and I commend many of the people in your hearing room today, Mr. Chairman, for their efforts.

Although I will admit that as the pieces are falling or are being squeezed into place on this issue, I have some concern regarding what the elements of the final package will be, but I even have greater respect for the efforts of all the parties concerned in seeking a solution and believe that the progress that has been made justifies keeping an open mind. I'm sure you'll hear from others today that there are still questions that need to be answered and concerns that must be addressed, but a solution appears possible this year and I look forward to presenting a consensus package for this Committee's jurisdiction and your counterparts in the House in the very near future.

Senator Adams brought up the question of the Midwest drought and what it is bringing to America, including a concern about the greenhouse effect. I would hope that with the work of many years of this Subcommittee that we can recognize the Yakima project as one of America's best and that whereas historically we are very much used to managing a limited resource, I think we can be a demonstration project and I volunteer the Yakima project to provide that demonstration for the rest of the nation, as an excellent example of water management. We need to get over this hurdle that we face right now.

Mr. Chairman, understand that this hearing does not present a polished product, but serves instead as a fulcrum point providing leverage to force this issue faster than is comfortable for most of the parties involved. I thank you for the opportunity.

[The prepared statement of Mr. Morrison follows:]

STATEMENT OF CONGRESSMAN SID MORRISON ON S. 2322 BEFORE THE SENATE WATER AND POWER RESOURCES SUBCOMMITTEE

JUNE 28, 1988

MR. CHAIRMAN:

AS THE SPONSOR OF THE COMPANION HOUSE BILL (H.R. 4453) TO S. 2322, I APPRECIATE THE OPPORTUNITY TO SPEAK WITH YOU FOR A FEW MOMENTS THIS AFTERNOON ABOUT THE YAKIMA RIVER BASIN WATER ENHANCEMENT PROJECT. THE LEGISLATION HAS EVOLVED SIGNIFICANTLY SINCE ITS INTRODUCTION IN APRIL, SO RATHER THAN ADDRESS THE SPECIFICS OF THE BILL, I WOULD LIKE TO DESCRIBE FOR YOU THE PROCESS THAT HAS BEEN MOVING US TOWARD WHAT I HOPE WILL BE A FINAL SOLUTION TO THE WATER PROBLEMS FACING THE YAKIMA RIVER BASIN.

S. 2322 IS THE LATEST IN A LONG LINE OF BILLS INTRODUCED OVER THE YEARS TO DEAL WITH THE FACT THAT THE WATERS OF THE YAKIMA RIVER ARE OVERAPPROPRIATED AND IN DRY YEARS THERE IS NOT ENOUGH WATER IN THE YAKIMA RIVER SYSTEM TO MEET THE DEMANDS PLACED ON IT. THE PURPOSE OF THE LEGISLATION IS TO FIRM UP THE SUPPLY OF IRRIGATION WATER FOR THOSE IRRIGATION DISTRICTS THAT HAVE THEIR WATER SUPPLY CUT BACK IN WATER SHORT YEARS, INCREASE THE LEVEL OF INSTREAM FLOWS FOR FISH PRODUCTION, PROVIDE ADDITIONAL IRRIGATION WATER FOR THE DEVELOPMENT OF THE YAKIMA INDIAN NATION AND IN THE PROCESS RESOLVE THE MANY CONFLICTING CLAIMS FOR WATER FROM THE YAKIMA RIVER SYSTEM. ALTHOUGH THE GOALS OF THE LEGISLATION ARE EASILY STATED, THEY UNFORTUNATELY HAVE NOT BEEN AS EASY TO ACHIEVE.

S. 2322 WAS INTRODUCED, DESPITE THE RESERVATIONS OF MANY OF THE INTERESTED PARTIES, WITH THE UNDERSTANDING THAT IT WAS NOT INTENDED

TO BE THE SOLUTION TO THE PROBLEM, BUT ONLY A STARTING POINT FOR DISCUSSIONS ON WHAT THAT SOLUTION SHOULD BE. SINCE THE BILL WAS INTRODUCED IN APRIL, THERE HAVE BEEN NUMEROUS MEETINGS AND HOURS OF DISCUSSION AMONG THE INTERESTED PARTIES.

ALTHOUGH I WILL ADMIT THAT AS THE PIECES ARE FALLING INTO PLACE I HAVE SOME CONCERN REGARDING WHAT THE ELEMENTS OF THE FINAL PACKAGE WILL BE, I HAVE GREAT RESPECT FOR THE EFFORTS OF ALL THE PARTIES CONCERNED IN SEEKING A SOLUTION AND BELIEVE THAT THE PROGRESS THAT HAS BEEN MADE JUSTIFIES KEEPING AN OPEN MIND. I AM SURE YOU WILL HEAR FROM OTHERS TODAY THAT THERE ARE STILL QUESTIONS THAT NEED TO BE ANSWERED AND CONCERNS THAT MUST BE ADDRESSED, BUT A SOLUTION APPEARS POSSIBLE THIS YEAR AND I LOOK FORWARD TO PRESENTING A CONSENSUS PACKAGE FOR THE SUBCOMMITTEE'S CONSIDERATION IN THE VERY NEAR FUTURE.

Senator **Bradley**. Thank you very much, Congressman, for showing your interest by coming to the Subcommittee today and sharing your views.

Senator Hatfield.

Senator Evans.

Thank you very much. Our next witness will be Hon. Robert Smith. Is he in the room at the moment?

Senator **Hatfield**. Mr. Chairman, I do have his formal statement and if he does not find it opportune to arrive here before the hearing is completed, I would like to have it entered into the record.

Senator **Bradley**. Then his statement will be entered into the record in full, and if he comes he will be allowed to briefly summarize that statement.

[The prepared statement of Mr. Smith follows:]

TESTIMONY OF CONGRESSMAN BOB SMITH (OREGON) BEFORE THE SUBCOMMITTEE ON WATER AND POWER ON TUESDAY, JUNE 28, 1988 (DIRKSEN SENATE OFFICE BUILDING SD-366).

Thank you for the opportunity to testify before the Subcommittee in support of the Umatilla Basin Project.

The Project is a $46 million proposal to restore historic Indian fishing runs on northeast Oregon's Umatilla River while preserving irrigation water for farmers. Senator Hatfield's legislation, S. 1613, would authorize the Project. I congratulate Senator Hatfield on his leadership in this matter. I know of few instances where legislation benefits everyone involved, but Senator Hatfield has managed to do just that with this bill.

If congressional approval is given, the Project would make possible the first constant Umatilla River flows for upstream fish migration in 74 years. That would be accomplished by injecting Columbia River water into the smaller river system. The Umatilla River has been blocked to the upstream passage of spring chinook since 1914 when an irrigation floodgate was constructed as part of a federal water relocation project at the River's mouth near Hermiston. Called Three Mile Dam, its construction violated an 1855 treaty that guaranteed Umatilla Reservation Indians the right to fish for salmon on the River. The snag in rectifying the problem has been that the Umatilla Basin's agricultural-based economy now depends on the former desert land watered by that project.

Under the remedy outlined in the bill Senator Hatfield has introduced and in an identical bill I have introduced in the House, HR 4093, water would be made available for irrigation use from the Columbia River while natural flows and upstream storage would restore needed water for fish passage. Without this bill local farmers could be in jeopardy of losing irrigation water under claims of Indian treaty rights. This loss of irrigation water is not something these communities can afford to lose. Over 40,000 acres are watered by basin supplies, supporting 2,000 full-time and part-time farms. The loss of this productivity would be devastating to these agriculturally-based communities.

Plans for the Project call first for construction of a pumping station near the mouth of the Umatilla River. Columbia River water would be funneled into the West Extension Irrigation Canal near Hermiston in late summer by the pumps. In a later phase, pumps would fill Cold Springs Reservoir near Hermiston with water from the Columbia River, making it possible to retain water in McKay Reservoir south of Pendleton for release during critical fish migration periods, instead of releasing it to irrigators.

An average 39,000 acre-feet of water would be pumped annually from the Columbia River. As a consequence, an average 46,000 adult salmon and steelhead would return to the Umatilla River annually and 112,000 fish would be added to the fisheries harvest of the Columbia River, Pacific Ocean and Umatilla River. The annual fish harvest would inject over $8 million into the community, and more importantly, it would rectify past injustices to the

Indians by the federal government. As Mr. Ellwood Patawa, Chairman of the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation said, the Project is a "win-win" situation for a "payment on a long-standing debt".

The Umatilla Basin Project, to the best of my knowledge, has no detractors. It has strong local support from all those affected--the Indians, the farmers, the local irrigation districts and the communities. Influenced in part by this local support and in part by my own convictions, I strongly endorse this bill and introduced identical legislation in the House last March 3rd. In short, this project is not only economically justified, but socially and morally essential.

Thank you for your attention to my concerns and those of my constituents.

Senator **Bradley**. Then let's move onto our next witness who is the Commissioner of the Bureau of Reclamation, the Honorable Dale Duvall, Department of the Interior, and I would ask you, Mr. Duvall, if you would identify the person who is with you and also if you would speak to both of the bills before the Committee at this time, rather than have you return to the chair and consider one bill at a time. I would like you to address both.

STATEMENT OF C. DALE DUVALL, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JOHN W. KEYS III, REGIONAL DIRECTOR, BUREAU OF RECLAMATION, PACIFIC NORTHWEST REGION

Mr. **Duvall**. Thank you, Mr. Chairman. Accompanying me here today is Mr. John Keys, who is the Regional Director of the Pacific Northwest Region for the Bureau of Reclamation. I will commence, with your permission, with the statement on the S. 1613 which is the bill to authorize the construction and operation and maintenance of the Umatilla Basin Project. I will summarize my remarks and trust that you will place the first statement in the record.

I am pleased to comment on S. 1613, which would authorize the construction of the Umatilla Basin Project. Since the Planning Report, Final Environmental Statement, however, is still under review within the Executive Branch——

Senator **Bradley**. Mr. Duvall, could you interrupt your testimony and let us allow the Congressman, since he has arrived? You may stay where you are and let the Congressman come up and make his statement which has already been placed in the record in full by Senator Hatfield.

So, if you could summarize, Congressman Smith, it would be helpful for the Committee. Your entire statement is already a part of the permanent record.

STATEMENT OF HON. ROBERT SMITH, U.S. REPRESENTATIVE FROM OREGON

Mr. **Smith**. Thank you, Mr. Chairman, Senator Hatfield, Senator Evans. I apologize for being a tad late. We were just having a vote on the floor of the House. But, thank you for protecting my time and I will really try to summarize my statement, which is rather short, but I think to the point. Basically, it endorses Senator Hatfield's bill. I have a similar bill before the House, exactly the same language and the effort here, of course, is to try to mitigate a wrong created very early on through dam construction on the Columbia River.

It's a question of mitigation of fish and an enhancement of a treaty entered into by the United States and the Indians for fishing rights on the Umatilla River. After that agreement, there then were irrigation rights given to irrigators, some owners of 40,000 acres of land, and there's obviously a conflict, as a result of a shortage of water, which is not available for both.

Now, the alternative, I suppose is to go into extensive and long judicial review which has occurred in the past when we have had jurisdictional questions, questions of treaty rights between Indians and other uses. But it seems to me that this idea that Senator Hatfield has proposed is a win-win situation for everyone, because what this really provides is a resurgence of water provided from the Columbia River to the Umatilla to provide sufficient water for both mitigation of fish and for irrigation privileges that occur as the rights of those who are in agriculture.

It doesn't disturb the water flow from the Columbia River at all. You will not hear testimony to that. It has the support of everyone in the Northwest, including environmentalists, all of the Oregon delegation and those who are in and out and knowledgeable about this issue.

I must warn the Committee there is a concern which you will hear about from the Bonneville Power Administration, but I would ask you to take a look at the Power Council, which is an advisory group to the Bonneville Power Administration, which organization has endorsed this project, because they are responsible for fish mitigation.

So I think we have unanimous support here. It is a question of providing sufficient water for two purposes and as everybody has agreed, it is a win-win situation.

It is a small amount, more money. I think you will hear $875,000. The real figure, I think, is more like $650,000 a year at a cost to Bonneville Power Administration and yet it is a noble cause. It is worth doing. It is cost beneficial and it has total support in the Northwest and I ask you to support the Senator's legislation and hopefully the House will act as well, and I thank you for listening. I'll be happy to answer any questions you have.

Senator Bradley. Thank you very much, Congressman Smith.

Senator Hatfield.

Senator Hatfield. Thank you, Mr. Chairman. I would just like to thank the Congressman from Oregon for his appearance here today. I look forward to working with you.

Senator Bradley. Senator Evans.

Senator Evans. No questions.

Senator Bradley. Thank you very much, Congressman, for showing your interest by coming to the Subcommittee today and offering us your testimony.

Mr. Smith. I appreciate your taking your time.

Senator Bradley. Mr. Duvall, as you were saying.

STATEMENT OF C. DALE DUVALL (Resumed)

Mr. Duvall. All right, thank you, Mr. Chairman. As I was indicating with respect to the Umatilla Basin Project, the Executive Branch, exercising an abundance of caution, is presently opposed to the enactment of S. 1613 because the planning report and the final environmental statement are still under review.

The Confederated Tribes of the Umatilla Indian Reservation in the State of Oregon and the irrigators, however, should be commended for their interest and their cooperation in this planning effort and in the objective of this bill because the proposed project would resolve an intensifying conflict over the use of the Umatilla River water for both irrigation and for salmon and steelhead.

The opportunity for cooperation among those groups in the local irrigation districts was apparent when Congress directed the

Bureau of Reclamation to commence planning this project. The planning effort, while undertaken by Reclamation, has been a cooperative endeavor, extensively involving the Confederated Tribes of the State of Oregon and the irrigation districts, a citizens' committee, the Northwest Power Planning Council, Bonneville Power Administration, U.S. Fish and Wildlife Service, the Forest Service and others.

The primary objective of the project is to improve stream flow and fish passage conditions to help restore salmon and steelhead runs, while continuing to meet the Federal irrigation water supply commitments to the existing Umatilla Project. By meeting both, the project would resolve the inherent conflicts created between Interior's responsibility to reclaim the arid West while also protecting the treaty reserve fishing rights of the Confederated Tribes.

The project is not intended to abrogate, limit, or to settle the reserved water rights of the Confederated Tribes. The project is a major element of the multi-faceted program to restore the Umatilla River fishery. Features beyond the scope of this project valued at some $21 million have been made a part of the Northwest Power Planning Council's Fish and Wildlife Program and currently are being implemented by the Bonneville Power Administration under authorities granted by Congress.

The Confederated Tribes and the State of Oregon also were providing funds and assistance. Construction of the Umatilla Basin project is estimated at $46 million, about $4 million of which, plus pumping power for stream flow enhancement, are to be funded by regional rate payers through the Bonneville Power Administration.

Mr. Chairman, that completes my statement on the Umatilla Basin Project.

[The prepared statement of Mr. Duvall on S. 1613 follows:]

STATEMENT OF C. DALE DUVALL, COMMISSIONER, BUREAU OF RECLAMATION, BEFORE THE SENATE SUBCOMMITTEE ON WATER AND POWER ON S. 1613, A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO CONSTRUCT, OPERATE, AND MAINTAIN THE UMATILLA BASIN PROJECT, OREGON

JUNE 28, 1988

Mr. Chairman, and Members of the Subcommittee, I am appearing today to comment on S. 1613 which would authorize the Secretary of the Interior to construct, operate, and maintain the Umatilla Basin Project. Since the planning report/final environmental statement is still under review within the Executive Branch, we must oppose enactment of S. 1613 at this time.

Representatives of the Confederated Tribes of the Umatilla Indian Reservation and the State of Oregon have previously appeared before committees of Congress to ask for help in formulating a plan that would resolve an intensifying conflict over use of Umatilla River water for irrigation and for salmon and steelhead. The opportunity for cooperation among those groups and local irrigation districts was apparent, and the Congress directed the Bureau of Reclamation to do the planning.

The planning effort undertaken by Reclamation has been a cooperative endeavor extensively involving the Confederated Tribes, the State of Oregon, irrigation districts, a citizens committee, Northwest Power Planning Council (NPPC), Bonneville Power Administration (BPA), Federal fish and wildlife agencies, Forest Service, and others. Public hearings on the potential project were held in Pendleton, Oregon, in September 1986. Congressional field hearings were held in February 1988.

The primary objective of the proposed project is to improve streamflow and passage conditions in the Umatilla River to help restore salmon and steelhead runs while continuing to meet the Federal irrigation water supply commitments of the existing Umatilla Project. By meeting both fish and irrigacion needs, the project would resolve an inherent conflict in Federal policy created earlier in the century between Interior's responsibility to reclaim the arid West and also to protect treaty-reserved fishing rights of the Confederated Tribes. The project is not intended to abrogate, limit, or settle the reserved water rights of the Confederated Tribes.

The basic concept of the project is to pump water from the nearby Columbia River for the continued irrigation of Umatilla basin lands, thereby preserving flows in the Umatilla River for salmon and steelhead. Passage hazards to migrating fish at existing irrigation diversion dams also would be corrected.

The project is a major element of a multifaceted program to restore the Umatilla River fishery which has been greatly diminished by regional resource development, including construction of the Federal Umatilla reclamation project in the early 1900's. Features of the basinwide program beyond the scope of this project are valued at $21 million and have been made a part of the NPPC's Fish and Wildlife Program and currently are being implemented by the BPA under authorities specifically granted by the Congress in the past several years. The Confederated Tribes and the State of Oregon also are provideng funds and assistance to the program.

Construction costs for the Umatilla Basin Project are estimated at $46 million. The legislation provides that about $4 million of construction costs associated with fish passage facilities and pumping power for the project's streamflow enhancement function be funded by regional ratepayers through the BPA.

For the subcommittee's use, I have attached a brief description of major features of the Reclamation project.

Mr. Chairman, this completes my statement. I would be pleased to answer any questions.

DESCRIPTION OF THE PROPOSED UMATILLA BASIN PROJECT, OREGON

The key feature of the proposed project is a water exchange with the Columbia River on the northern boundary of the Umatilla basin. Irrigators would forego some Umatilla River diversions and have that water replaced from the Columbia River. The exchange would improve Umatilla River flows during periods critical to fish.

Project Purposes

Streamflow and fishway improvements are critical to restoration of natural and hatchery runs of salmon and steelhead. Reclamation estimates that with the project, adult fish returns to the Umatilla River alone would average 46,000 fish. All together, the project would add an estimated 112,000 fish annually to the Columbia River, Pacific Ocean, and Umatilla River fisheries harvest.

Farmers would benefit from a resolution of the conflict over competing water needs for irrigation and fish. Near record runs of chinook salmon migrated up the Columbia River this past fall--evidence that Columbia River fishery restoration is working. In contrast, Umatilla River fall streamflows needed for fish migration were practically nonexistent. Absent a new water source, irrigation water supplies could be in jeopardy under claims of Indian treaty rights.

Project Features

Project features are designed to meet the streamflow objectives in the lower 50 miles of the Umatilla River established by tribal, State, and Federal biologists. These flows also agree with State objectives for the basin. Flows of 300 cubic feet per second (cfs) from October 1 through November 15, and 250 cfs from November 16 through June 30 and September 16-30 would be satisfied by the project in most years.

The project's major water exchange feature is a Columbia River pumping complex consisting of pumps and canals to deliver Columbia River water to existing distribution facilities of the Hermiston and Stanfield Irrigation Districts. Other water exchange features to be constructed include: (1) facilities to exchange water (up to 140 cfs) with the West Extension Irrigation District at Three Mile Falls Diversion Dam to improve flows in the lowest reach of the Umatilla River, and (2) a small pumping station on the Umatilla River at Cottonwood Bend (river mile 13) to exchange water (30 cfs) with Westland Irrigation District.

The exchange water supply pumped from the Columbia River would average about 39,000 acre-feet annually and range from a low of about 13,000 acre-feet to a high of about 74,000 acre-feet depending on natural runoff conditions in the Umatilla basin. On the average, about 19 million kilowatt-hours of power would be needed annually to operate project pumping facilities. The Northwest Power Planning Council has adopted a measure which calls for the Bonneville Power Administration to provide that power as a part of the Council's Fish and Wildlife Program.

In addition to water exchange facilities, the Umatilla Basin Project includes installation of fish passage facilities and screens at Maxwell, Feed Canal, Westland, and Stanfield Diversion Dams and Furnish Ditch and a fish barrier at the mouth of McKay Creek. Construction of these features would be provided by the Bonneville Power Administration under funding authority included in the 1987 Department of Energy appropriation bill.

The proposed Reclamation project would include a program to monitor postconstruction operations so that streamflows could be "fine tuned" to maximize fishery benefits. A project oversight committee would be formed to provide a forum of communication among irrigators, tribal leaders, State water managers, fish and wildlife experts, and project operators. This group would develop annual fish passage and flow objectives within project guidelines. Water regulation and enforcement would be provided in cooperation with the Oregon State Watermaster Office in Pendleton, in accordance with State water law and the agreements specific to the Umatilla Basin Project.

Operation and maintenance oversight would be by personnel of Reclamation's Yakima Project Office. That staff has experience in managing and operating similar fishery enhancement programs and facilities in the Yakima River Basin.

Project Costs and Benefits

Construction costs are estimated at $46,000,000 based on April 1987 costs, and include about $4,000,000 for fish ladders and screens to be funded by the Bonneville Power Administration. Annual costs and benefits are shown following (based on a 100-year period of analysis at 8-7/8 percent interest rate).

Item	Amount
Annual Costs	
Construction	$4,076,000
Operation, maintenance, and replacement	238,000
Power (includes power for pumping plants--$421,000 at 22.2 mills, a value of power generation foregone at downstream powerplants--$28,600, and economic value of replacing power from another source--$223,400)	673,000
Power wheeling	172,000

Total annual costs	$5,159,000
	==========
Annual Benefits	
Anadromous fish (sport fishing and commercial value)	$7,760,000
Resident fish	79,000
Benefits to unemployed labor resources	316,000

Total annual benefits	$8,155,000
	==========

Project monetary benefits compared to annual project costs results in a benefit-cost ratio of 1.6 to 1.0 based on a 100-year period of analysis with a Federal interest rate of 8-7/8 percent.

It should be noted that Umatilla River fish passage facilities constructed under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 are considered in the calculation of project benefits and costs.

Construction Schedule

About 5-1/2 years would be needed to design and construct all project facilities under an optimum construction schedule, following authorization and with adequate appropriations. However, the project can be developed in phases. Construction of facilities to exchange water with the West Extension Irrigation District at Three Mile Falls Diversion Dam would be a productive first phase. That exchange would improve streamflows from the Columbia River to the diversion dam. In combination with the new fish passage facilities now under construction at the dam and recent channel work, both funded by Bonneville Power Administration, fish would be able to return at least to Three Mile Falls Diversion Dam for harvest or transport to other areas. First phase facilities would cost about $7,000,000 and could be in place within 2 years after authorization and funding. First phase operation and maintenance costs would be about $15,000 annually, and pumping power costs would be about $44,000 annually (2 million kilowatt-hours at 22.2 mills).

The Administration has not yet developed a position on the appropriate level of non-Federal cost sharing for the proposed project.

Cost Sharing

The Administration has not yet developed a position on the appropriate level of non-Federfal cost sharing for the proposed project. Local and regional interests, however, are investing in Umatilla basin fishery restoration programs. The Northwest Power Planning Council has fishery facilities in its Fish and Wildlife Program which will cost about $21,000,000 (including fish passage facilities). Those these facilities are being funded by regional ratepayers through Bonneville Power Administration. To date, $7,000,000 has been expended and additional projects totaling $8,000,000 are in the final design stage. The Oregon Department of Fish and Wildlife has funded fish hatchery outplantings valued at about $200,000 per year, and the State has also funded the activities of the Umatilla Basin Project Citizens Steering Committee to aid in resolving critical water conflicts. Irrigators in the Umatilla basin are helping to fund fish monitoring programs, and are participating in planning studies.

Senator **Bradley**. Why don't you go ahead and make your statement on the Yakima Project and then we can ask questions on both?

Mr. **Duvall**. With respect to S. 2322, a bill to authorize the Yakima River Basin enhancement project, I am pleased to comment on this bill, as well. Certain elements of the Yakima Basin Project have already been constructed. This bill would authorize the water enhancement and storage features of that project. Inasmuch as the planning process on this project also has not been completed, it is the official Administration position that we oppose enactment of S. 2322 at this time.

The concept of this bill is a multi-faceted approach to meet the basin's water needs through conservation measures and increased storage. Water use efficiency would be improved through institutional means, such as mechanisms for transferring of water, and through structural measures to improve delivery and application. Construction of some early implementation facilities would occur at the same time that a basin-wide conservation program was being developed.

Enlargement of Bumping Lake, the storage component, would be deferred until the basin-wide conservation program is well underway. Total storage would be increased significantly, allowing storage of a larger part of the runoff, as well as water saved through efficiency.

Federal activities in the basin began in 1855 when the Yakima Indian Nation Treaty was established. It established a one million acre Indian reservation. Reclamation began studies and construction in the Yakima Basin almost immediately following passage of the 1902 Reclamation Act. In the 1920's, the Wapato Indian Irrigation Project was constructed by the Bureau of Indian Affairs.

Today, about 125,000 acres of reservation lands are irrigated. About one-half-million acres are irrigated in the entire basin, producing primarily apples, cherries, pears, and specialty crops, including hops and mint, with annual values of about $410 million.

In addition to irrigation and Indian water rights issues, there is also concern over the basin's anadromous fishery. In the late 1970's, the number of spawning fish was less than 2,000. However, through cooperative management and the Yakima Fish Enhancement Program, the anadromous fishery now is showing a good recovery in fish returning to spawn.

Largely due to the need for an assured water supply, which was emphasized in the severe drought of 1977, the Congress authorized the Yakima River Basin Water Enhancement Project feasibility study in 1979. The major objectives of the study are to provide water to increase stream flows, protect and enhance the anadromous fish, provide water for new irrigation development on the Yakima Indian Reservation, provide supplemental water to presently irrigated Indian and non-Indian lands and, finally, develop a comprehensive management plan for the basin to enable efficient utilization of the existing water supply.

The study resulted in a multi-agency, Federal, State, Indian, local planning effort, using a phased approach. The first phase, a fish-passage and protective-facilities program, was developed separately. Authorized by Congress in 1984, it is now being implemented in cooperation with the Northwest Power Planning Council, Bonneville Power Administration, the State of Washington, Yakima Indian Nation, basin irrigation entities, Bureau of Indian Affairs, and local municipalities. During the second phase of the study an early implementation program was developed consisting of nonstorage elements to improve water supplies.

Legislation was introduced in the 99th and 100th Congress and field hearings were held in Yakima in 1986 and 1987. S. 2322 includes most of the facilities in those earlier bills, but also includes additional conservation measures, substitutes Bumping Lake enlargement for storage at Cabin Creek, and provides for settlement of a significant part of the Yakima Indian Nation claims.

That completes my prepared comments.

[The prepared statement of Mr. Duvall on S. 2322 follows:]

STATEMENT OF C. DALE DUVALL, COMMISSIONER, BUREAU OF RECLAMATION BEFORE THE SENATE SUBCOMMITTEE ON WATER AND POWER ON S. 2322, A BILL TO AUTHORIZE CERTAIN ELEMENTS OF THE YAKIMA RIVER BASIN WATER ENHANCEMENT PROJECT, WASHINGTON

JUNE 28, 1988

Mr. Chairman and members of the Subcommittee, I am appearing today to comment on S. 2322 which would authorize the Secretary of the Interior to plan, design, construct, operate, and maintain certain elements of the Yakima River Basin Water Enhancement Project. We must oppose enactment of S. 2322 at this time as the planning process has not been completed.

The basic concept of S. 2322 is a multifaceted approach to meet the Yakima River basin's water needs through both conservation measures and increased storage capacity. Water use efficiency would be improved through institutional means such as developing mechanisms for transfer of water and through structural measures to improve delivery and application of irrigation water. Construction of some early implementation facilities would occur at the same time that a basinwide conservation program was being developed. Enlargement of Bumping Lake, the storage component, would be deferred until the basinwide conservation program is underway. Total basin storage would be increased significantly allowing for storage of part of the runoff, as well as for storage of water saved through improved water use efficiency. This carry-over water would be available for use in the Yakima basin in dry years.

I would like to provide a brief summary of our previous Federal activities in the basin. Federal involvement in the basin began in 1855 when the United States entered into a treaty with the Yakima Indian Nation in 1855, which established the one-million-acre Yakima Indian Reservation. The Bureau of Reclamation began studies and construction of irrigation facilities in the Yakima River basin almost immediately following passage of the 1902 Reclamation Act. In the early 1920's, the Wapato Indian Irrigation Project was constructed on reservation lands by the Bureau of Indian Affairs. Project lands are served from natural flow rights and water furnished under contract by Reclamation. Today, about 125,000 acres of reservation lands are irrigated. The Federal Yakima Project now includes five storage reservoirs, conveyance and distribution works, and two hydroelectric power generating plants. About 1/2 million acres are irrigated in the basin, which produces primarily apples, cherries, pears, and specialty crops including hops and mints. The annual value of agricultural production was about $410 million in 1986.

In addition to irrigation and Indian water rights issues, there also is concern over the basin's anadromous fishery. In the late 1970's the number of spawning fish was less than 2,000; however, through cooperative management efforts the anadromous fishery now is showing some improvement. The basin is the primary area identified in the Fish and Wildlife Program of the Northwest Power Planning Council (NPPC) for enhancement of the anadromous fishery and for mitigation of losses resulting from hydropower development throughout the Columbia River basin.

A further concern of basin residents is the need for an assured water supply. As a result of a severe drought in 1977, the State of Washington initiated a general adjudication of the basin's surface waters. Included in this adjudication are tribal claims for off-reservation instream flows and for additional on-reservation water needs. At the same time, the State of Washington, in conjunction with the Yakima Indian Nation, asked that a comprehensive study be undertaken to review basin needs and to find solutions to the basin's water problems. As a result of that request, the Congress authorized the Yakima River Basin Water Enhancement Project feasibility study in 1979.

The major objectives of the enhancement project are to: (1) provide water to increase streamflows to protect and enhance anadromous fish, (2) provide water for new irrigation development on the Yakima Indian Reservation (3) provide supplemental water to presently irrigated indian and non-indian lands, and (4) develop a comprehensive management plan for the basin to enable efficient utilization of the water supply.

The study is a multiagency Federal/State/Indian/local planning effort which uses a phased approach. In the first phase of the study, a fish passage and protective facilities program was developed because the anadromous fishery was at a critically low level. That program was authorized by Congress in 1984. It is now being implemented in cooperation with the Northwest Power Planning Council, Bonneville Power Administration, State of Washington, Yakima Indian Nation, basin irrigation entities, Bureau of Indian Affairs, and municipalities. Completion of this phase of the program is scheduled in 1989.

During the second phase of the study, an early implementation program was developed consisting primarily of nonstorage elements to improve water supplies. Legislation was introduced in the 99th and 100th Congresses which would authorize the early implementation program and field hearings were held in Yakima on July 1, 1986, and on October 19, 1987. S. 2322 includes most of the facilities proposed in those earlier bills, but also includes additional conservation measures, substitutes Bumping Lake enlargement for storage at Cabin Creek, and provides for settlement of a significant part of the Yakima Indian Nation claims.

Mr. Chairman, this completes my statement. I would be pleased to answer any questions.

Senator **Bradley**. Thank you very much, Mr. Duvall.

Senator Hatfield.

Senator **Hatfield**. Thank you, Mr. Chairman. I have about three questions that I think can be answered briefly. Commissioner, you state in the first paragraph of your statement that you have to oppose the enactment of S. 1613 because the planning report on the final environmental statement is still under review. I find it rather strange that you have to oppose something that has not been completed in the review process.

That just doesn't quite come out two plus two equaling four. How can you oppose a project when you haven't really completed the reviewing process? Usually an agency will oppose something on a substantive basis and not on a matter of merely not having had time to review the details. Would you imply by this that the Administration at some point in the future will support the project when they finish reviewing? And, when do you expect to finish the review?

Mr. **Duvall**. It's my understanding, Senator Hatfield, that we at the Bureau of Reclamation believe this to be a valid, worthwhile project. It is cost beneficial and it is a project that corrects some major inequities that have been long standing. Consequently, we believe that the Administration eventually will find a position where they can support this project. However, the planning report is in the review process in the Department at this point in time. When it clears that hurdle, it does go to the Office of Management and Budget for their approval and any approval from the Administration's standpoint comes after the Office of Management and Budget has had an opportunity to review it.

Senator **Hatfield**. I did hear you say the Office of Management and Budget?

Mr. **Duvall**. That is correct.

Senator **Hatfield**. That clarifies a great deal. Mr. Commissioner, according to the supplemental information that you provided the Committee, you indicate and affirm that this is a 1.6 to 1 cost/benefit ratio. Is that correct?

Mr. **Duvall**. That's correct.

Senator **Hatfield**. Do you remember when any other project had such a high cost/benefit ratio?

Mr. **Duvall**. It is unusual in today's economy to find projects with that favorable of a benefit ratio.

Senator **Hatfield**. At the same time you used a priority firm rate of about 23 mills in the computation, I believe. Now, why was the priority firm rate used this being one of the highest and most of the others are computed at a lower rate when charged to other Federal Agencies?

Mr. **Duvall**. For our purposes, Senator, we have calculated it both ways. As to why we use that one, I think I would defer to my technical people.

Mr. **Keys**. That rate was used upon the advice of Bonneville Power Administration. We were trying to be conservative in the benefits for the project.

Senator **Hatfield**. But you have computed it on both bases?

Mr. **Keys**. Yes, sir.

Senator **Hatfield**. In your statement on page 2, you indicate that this would result in inherent conflict in Federal policy created earlier in this century between Interior's responsibility to reclaim the arid West and also to protect treaty-reserved fishing rights for the Confederated Tribes. Could you give me some indication as to which of these two responsibilities have received the most attention under the Federal agencies since about 1900?

Mr. **Duvall**. With respect to this particular area, or are you speaking of the West?

Mr. **Hatfield**. To the region they were involved with here. Where would you say the Federal Government has put its best foot forward and asserted itself in the most activity as to the two points: the responsibility of Interior to reclaim the arid West and number two, in contrast to the activities of the Interior, in protecting the treaty reserved fishing rights of the Confederated Tribes.

Mr. **Duvall**. I think that would be difficult for me to say what has been done with respect to protecting their fishing rights. As a native of the Pacific Northwest, I am aware that much has been done at the Federal level. However, I think that it's fair for us to concede that in this particular treaty that there are protections that have been abrogated and that this proposed project would go toward correcting what is——

Senator **Hatfield**. Would you supply for the record, Commissioner, a list of those projects since 1900 that you have? I think you could do that very quickly when you go back to the record because it's not a very long list, where you have exercised the duties and responsibilities through one Administration after another to protect the Umatilla fishing rights in that area, as against what you have done in terms of reclaiming the arid West.

Mr. **Duvall**. Your question is addressed to the Bureau of Reclamations projects?

Senator **Hatfield**. Yes.

Mr. **Duvall**. OK.

Senator **Hatfield**. Generally, any other activities under Interior. I want to be broad minded about this.

[The information follows:]

Answer: Reclamation in the Pacific Northwest Region has been involved with water-related interests of Indian tribes under three basic categories: (1) in planning water Projects for non-Indian purposes where Indian lands are involved, 2) at the specific request of the Bureau of Indian Affairs, and (3) to meet specific objectives of an Indian tribe at the tribe's request. Under the first category, programs have included Indian reservation irrigation (including delivery systems and storage water), on-reservation recreation facilities, and fish and wildlife mitigation. Many of these efforts have been attachments to water and land development projects planned primarily to meet the needs of non-Indian user groups. Under the second category, projects have been developed on reservations because the Bureau of Indian Affairs requested Reclamation's expertise. Examples of these first two categories are included in Attachment A.

More recently, Reclamation has planned projects in the Pacific Northwest with the specific purpose of addressing Indian objectives for fish and wildlife restoration and on-reservation economic development. Examples of these activities are included in Attachment B. The focus of these efforts has been to provide streamflow and passage improvements for anadromous fish. In Oregon's Umatilla River basin, planning efforts have been guided toward restoring salmon and steelhead runs by exchanging water with the Columbia River for irrigation usage, thereby preserving flows in the Umatilla River. This project, if implemented would substantially meet flow restoration objectives of the Confederated Tribes of the Umatilla Indian Reservation for the Umatilla River.

In the Yakima River basin of Washington, a cooperative Federal/State/tribal/local effort is underway to address water and land resource issues both on-reservation and off-reservation. The Yakima Indian Nation is evaluating on-reservation resources and development alternatives; off-reservation planning activities are addressing supplemental irrigation needs and instream flows for the enhancement of the anadromous fishery, a priority tribal objective. Construction of fish ladders and screens at 20 sites are underway and, since fiscal year 1985, appropriations totalling about $30,000,000 have been made to Reclamation to aid in the construction of these facilities.

Since 1980, several Reclamation planning studies in other basins have focused on rehabilitating runs of anadromous fish associated with Indian tribes. Preliminary plans have been formulated to address fish production objectives in the John Day, Grande Ronde, and Deschutes Rivers basins of Oregon and the Salmon and Clearwater Rivers besin of Idaho. These potentials have not progressed beyond the planning stage.

ATTACHMENT A

Bureau of Reclamation Projects Benefiting Indians in the Pacific Northwest Region

Project	State	Tribe	Benefit	Project Status
Minidoka Project	Idaho, Wyoming	Shoshone-Bannock Fort Hall Reservation	Irrigation, 132,000 acre-feet, and recreation	In operation
Owyhee Project	Idaho, Oregon, Nevada	Shoshone-Piute Duck Valley Reservation	Irrigation, 72,000 acre-feet	In operation
Yakima Project	Washington	Yakima	Irrigation, 350,000 acre-feet, Wapato Irrigation Project (BIA)	In operation
Spokane Indian	Washington	Spokane	Irrigation of about 1,800 acres	In operation
Chief Joseph Dam	Washington	Colville and Wapato	Irrigation and anadromous fish	In operation
Grand Coulee Project	Washington	Colville	Irrigation, municipal water supply, and recreation	In operation
Flathead Indian Irrigation	Montana	Kootenai, Salish	Reclamation/BIA operation and maintenance program	In operation

ATTACHMENT B

Planning Studies Directed at Indian-related Objectives in the Pacific Northwest Region

Study	State	Tribe	Purpose	Study Status
Fort Hall Reservation	Idaho	Shoshone-Bannock	Irrigation facility rehabilitation and irrigation potential study at the request of BIA	Complete
South Fork Reservation	Nevada	Shoshone	Water diversion study for reservation needs at the request of BIA	Complete
Colville Indian Reservation	Washington	Colville	Study of multipurpose water needs and development opportunities	Complete
Umatilla River Basin	Oregon	Confederated Tribes of the Umatilla Indian reservation	Rehabilitation of anadromous fish runs	Complete
Upper John Day	Oregon	Umatilla	Anadromous fishery improvement study	Underway in FY 1989
Grande Ronde River Basin	Oregon	Umatilla, Nez Perce	Anadromous fishery improvement study	Complete
Lower Deschutes River Basin	Oregon	Umatilla, Warm Springs	Anadromous fishery improvement study	Complete
Idaho Anadromous Fish Habitat Improvement Study	Idaho	Nez Perce, Shoshone-Bannock	Anadromous fishery improvement study	Complete
Warm Springs Reservation	Oregon	Reservation Tribes	Irrigation study, 2,500 acres	Complete
Yakima River Basin Water Enhancement Project	Washington	Yakima	Anadromous fishery improvement study, onreservation irrigation	Ongoing

Senator **Hatfield**. Finally, I would just like to make a comment, Mr. Chairman. It seems to me that it does very little good to give rhetoric about protecting the Indian fishing rights when there are no fish in the rivers and I think that's the real crux of this whole project. It is to provide the flow. It is to provide not only for the current claims of irrigation and water rights of irrigators but to provide us with the capacity to fulfill some of the treaty rights that have not been fulfilled to the Warm Springs. That's why I would like to see the Administration quickly finish its review and quickly shift its position from opposition to support where it does recognize that it has those two prime responsibilities amongst others—to reclaim the arid West and to preserve the Indian fishing rights. Both of those are incorporated in this particular model bill. Thank you, Mr. Chairman.

Senator **Bradley**. Thank you. Senator Hatfield? Senator Evans?

Senator **Evans**. Thank you, Mr. Chairman. I'm afraid the questions may appear repetitive because the testimony is quite similar on both bills. Let me just ask bluntly, at the end of paragraph 1 where you say, "We must oppose enactment of S. 2322 at this time, as the planning process has not been completed." Was that part of the original testimony of the Bureau of Reclamation or was that as interpreted by the Office of Management and Budget?

Mr. **Duvall**. As I recall, Senator, the statement that was sent by the Department to the Office of Management and Budget took no position or did not support as opposed to opposition.

Senator **Evans**. It did not oppose, but it did not support?

Mr. **Duvall**. Did not support.

Senator **Evans**. So, it's OMB that decides that the planning process has not been completed?

Mr. **Duvall**. Well, the planning process has not been completed. I will stick by that. The question of whether we use the terminology "oppose" or "do not support" is an OMB call.

Senator **Evans**. How long do you expect it to be before the planning process is completed?

Mr. **Keys**. There are several phases of the planning process underway at present. The plan formulation working document for the off-reservation work should be completed in 1989. There are other aspects of the work on the Yakima Indian Reservation that are not being completed until 1991.

Senator **Evans**. Are you suggesting that nothing be done in the Yakima Valley until 1991?

Mr. **Keys**. No, sir. There are parts of the project that we can work on in the meantime, while that planning for the work on the reservation is underway.

Senator **Evans**. What year would you say that the Bureau of Reclamation began the planning process for additional water in the Yakima Basin?

Mr. **Keys**. The authorization for the Yakima River Basin water enhancement project was 1979.

Senator **Evans**. I'm not talking just about that. That's just a phase of the whole thing. When did you start? 1902?

Mr. **Duvall**. Oh, for Yakima River development? That was one of the very first study areas that the Bureau went to work in after the creation of the Bureau.

Senator EVANS. We've been sending water supply in the Yakima Basin since 1902 is what you're saying?

Mr. KEYS. That's correct.

Senator EVANS. Somewhere along the line we did do something, didn't we? When did we assume the planning process—obviously, the planning process has never been complete. They've been going at it for 85 years, but we do some things along the line. I guess you keep studying and we keep acting, is that the way it goes?

Mr. KEYS. Well, unfortunately, that's the way it has been in the past. The first structure, of course, was Bumping Lake and then in a further attempt to satisfy the water demands there, Kachess, Keechelus and Cle Elum were built. With the expansion of the irrigation in the valley and the water use and now the need for water by the Indian nations and in-streams flows, there's more water necessary and so it is a continuing process.

Senator EVANS. If we got to the point where the parties—there are two halves to all of this. One is water distribution and the other one is water supply. Let's leave the water supply out for just a moment, as to where we get the water, but assuming that the parties all got together, the irrigators, junior and senior districts, the Yakima Indian nation, fish and wildlife agencies. Let's just assume that they finally came together on an agreed upon distribution of water or its substitute—they agree now or at some time in the very near future. Does that constitute a pretty significant goal along the path of the planning process?

Mr. KEYS. Yes, it would.

Senator EVANS. At that point, would you feel it necessary to wait until 1991 to conclude the effort?

Mr. KEYS. If they agreed upon the need, then we would have to try to find the supply to meet that need.

Senator EVANS. I'm going to get to that. If we agree to the distribution, you know, with all of those parties involved, the state involved, the Yakima Indian nation, the irrigators, the local, you know, the whole works, does the Bureau then feel that there is sufficient agreement to buy off on that kind of an agreement on distribution, not on supply?

Mr. KEYS. I would say yes to that because one of the problems we faced up to now is there has not been that agreement on the distribution and so I would say that would take a great step forward in solving the problem of who gets what water and where.

Senator EVANS. Commissioner, you are the boss.

Mr. DUVALL. Yes, I can support that.

Senator EVANS. Assume that that is done, then I would add to this incidentally, that if this settlement was in agreement that the junior water district would say that we would no longer chip away at the senior water district, the Yakima Indian nation saying that this satisfies our rights, so that you clear out the underbrush of litigation and problems and that just adds to the desirability, doesn't it?

Mr. KEYS. That would be a hurdle that we've been facing for a long time that would be behind us and would certainly clear the way for a lot of action.

Senator EVANS. OK. So, then the planning process turns to how you supply the water.

Mr. KEYS. That's correct.

Senator EVANS. Is that a problem that you think would be resolved before 1991?

Mr. KEYS. That is certainly our goal, what we were working toward right now.

Senator EVANS. How about by August?

Mr. KEYS. Of 1991?

Senator EVANS. Of 1988. I'm putting out—this is a real target. I'm not even saying we are there yet, but if we were wouldn't it be worthwhile to grab that quick while you can to work like the devil to find appropriate resources, whether it's partly conservation, partly water banking, partly new resources, partly the way you operate the river?

Mr. KEYS. Senator, we've seen S. 2322 as that culmination that gives us a sight to settling that thing. If we could get it done by August, that would, as I said, certainly solve a lot of problems. A lot of the steps that had been made in putting S. 2322 together, we think, have brought people closer together in that Basin than they've ever been before.

Now the dryness, I wouldn't say we're in a drought in the Yakima Basin, but we started out that way this year and that brought people together also. But the understanding of a potential solution for that Basin—in other words, a comprehensive solution that includes conservation and storage—we think has brought those people together and the elements of this bill we think do that.

Now, the magnitude of some of those elements still needs to be agreed upon or negotiated. But that's what we hope will come out of S. 2322.

Senator EVANS. But, as far as the Bureau is concerned, you are not, by saying the planning process has not been completed and by saying that your normal course of events would have that extended to 1991, does not necessarily mean that you can't come together pretty fast on something if we get that kind of agreement?

Mr. KEYS. It does not mean that and we will certainly try to do that.

Senator EVANS. Good. Thank you very much, Mr. Chairman.

Senator HATFIELD. I don't think the Commissioner answered my question on the timing or the review of the plan.

Mr. DUVALL. The amount of time?

Senator HATFIELD. That it will take to finish the review.

Mr. DUVALL. Well, Senator, I was hopeful that we would be at this juncture in a position where we could say that we had completed the investigation and review of the package in the Department of the Interior. We have responded to the questions that were raised by the Secretary's review personnel and they are now fitting the responses into their understanding of the package. I think we are a matter of days or weeks from finding consensus within the Department.

Senator HATFIELD. Thank you, Mr. Chairman.

Mr. KEYS. May I add something? Mr. Hatfield, the environmental impact statement was filed on February 19, 1988, for the project with EPA and the 30 day review process is completed. There were no significant impacts, environmental impacts, associated with the project, no significant detrimental impacts—lots of benefits. So, that part of the process is done already.

Senator **Hatfield**. Maybe next week.

Senator **Bradley**. Was that a question, Senator Hatfield? Thank you.

Let's talk about the Umatilla Project first. Would there be any perceptible impact on the flow in the Columbia River should the Umatilla Project be constructed and operated?

Mr. **Keys**. The annual withdrawal from the Columbia River is about 39,000 acre feet. The annual flow of the river is several hundred thousand cubic feet per second. I think it's about 20 million acre feet per year. So there is no perceptible change in the flow of the Columbia River.

Mr. **Duvall**. Even beyond that, it is basically a water exchange so that you are taking water out of the river in order to allow the Umatilla water to continue to flow down the Umatilla River, which ultimately winds up in the Columbia again. So, it is really an exchange of water.

Senator **Bradley**. As a result of this, would any new land come under irrigation?

Mr. **Keys**. No, it would not.

Senator **Bradley**. Does the bill allow using surplus system capacity to provide additional water for irrigation districts, is that correct?

Mr. **Keys**. Yes, that's correct. The pumps for the project will be sized to meet the fishery needs. During the period of the year when the capacity is not needed for those fishery flows, the bill allows the irrigation district to use that excess capacity to pump irrigation water.

Senator **Bradley**. What is the anticipated cost of that water to the districts?

Mr. **Keys**. In the bill there is one element of the cost and that's the power cost. We had been discussing the operation, maintenance and replacement cost and I don't have a figure for that cost but we could certainly provide it.

Senator **Bradley**. I would like to have it provided if you could. And, does it include repayment for any of the capital costs of the system?

Mr. **Keys**. No, it does not.

Senator **Bradley**. Assuming that only surplus capacity is used to pump additional water to the district, has the Bureau examined what would be an appropriate share of capital costs to be repaid by the districts?

Mr. **Keys**. Yes, we have looked at that and the answer is zero. The water supply from those pumps is supplemental and would only be available when not needed by the fishery function of the project. That means it would be interruptible and not available to them all of the time, so in some years it may not be available at all. In other years, it could be available for a long time.

Senator **Bradley**. So, because it is only surplus water, you would argue that they don't have a call on it, they don't have a firm contract on it, therefore they can't plan that they're going to get it and therefore they shouldn't be assessed part of the capital costs?

Mr. **Keys**. That's correct.

Senator **Bradley**. Under your interpretation of the bill, could water be delivered to lands that are presently not served by the Umatilla Project?

Mr. **Keys**. No.

Senator **Bradley**. They could not be?

Mr. **Keys**. That's correct.

Senator **Bradley**. And you will provide for the record what the charge per acre foot of additional water would be?

Mr. **Keys**. Yes.

[The information follows:]

Answer: These costs would vary by year and by irrigation district according to volume and timing of pumping, project facilities affected, and pump lift. A scenario reflecting an average pumping condition for the Hermiston, Stanfield and West Extension irrigation districts was developed to give a preliminary view of costs. Because of location of its irrigation facilities, a fourth irrigation district (Westland) would not have physical access to water pumped from the Columbia River. The following cost estimates are based on average conditions, and would vary under actual conditions of use. The pumping power costs are estimated at 16.7 mills per kilowatt-hour for the Stanfield and West Extension irrigation districts, and 10.9 mills per kilowatt-hour for the Hermiston district (much of the Hermiston pumping would occur at night when lower power rates are applicable).

Hermiston Irrigation District--average year pumping estimated at 1,780 acre-feet with a total UM&R, power and power wheeling cost of about $14,000 ($6.91 per acre-foot for OM&R and power).

Stanfield Irrigation District--average year pumping estimated at 3,934 acre-feet with a total OM&R, power and power wheeling cost of about $68,000 ($15.52 per acre-foot for OM&R and power).

West Extension Irrigation District--average year pumping estimated at 3,000 acre-feet with a total OM&R, power and power wheeling cost of about $10,000 ($3.17) per acre-foot for OM&R and power).

Senator **Bradley**. One last thing on the Umatilla project. In your background sheet you talked about the return of the fish to the Umatilla River and you said an average of 46,000 fish. Now, you're going to be followed by Mr. Robertson who indicates that the increase would be 17,000 fish. Do you think you could get together and figure out how many fish you're talking about?

Mr. **Keys**. I think I could give you the answer already. When we build the project, it will bring back about 30,000 fish per year to the river. The facilities that Bonneville Power already has under construction will bring back about 13,000 fish. That puts us up to 43,000. With the flows that are there now, there are about 3,000 fish that make it up the river. The total is the 46,000.

Senator **Bradley**. I see. So, he is talking about what is there now plus what Bonneville adds?

Mr. **Keys**. Yes.

Senator **Bradley**. On the Yakima Project, on the Bumping Lake enlargement, have other potential storage sites been examined by the Bureau?

Mr. **Keys**. Yes. We have looked at approximately 40 different storage sites in the Yakima Basin. We have done extensive reviews and studies on several of those. All of them have detrimental aspects. We have settled on two of them that are more positive than the others, that have more benefits. Those are Bumping Lake enlargement and the Wymer Pump Storage Project, but we have looked extensively at 40 of them. Some of them fell out early because of flaws that stand out. Others we did more study on.

Senator BRADLEY. Did you have cost estimates on all 40?

Mr. KEYS. We have cost estimates on most of them. I would not say we have them on all of them because some of them we did not take forward after we found definite reasons that they shouldn't be studied.

Senator BRADLEY. But they came to you ranked according to cost. Not all 40, but clearly drop out the bottom ten.

Mr. KEYS. They could be ranked on desirability and cost would certainly be a factor.

Senator BRADLEY. Can you rank them on cost?

Mr. KEYS. Yes.

Senator BRADLEY. I would like to see you provide the Committee with a ranking on cost. Could you rank them on the basis of safety factors?

Mr. KEYS. Yes.

Senator BRADLEY. Particularly with regards to the various storage sites?

Mr. KEYS. Yes.

Senator BRADLEY. In terms of foundations, whether they are the most active falls, et cetera?

Mr. KEYS. We could rank them. It might go one through ten and there would be 20 of them ranked number 10 or something like that, but they could be ranked.

Senator BRADLEY. Could you provide that for the record?

Mr. KEYS. Yes, we will.

Senator BRADLEY. The bill authorizes an expanded Wapato Indian Irrigation Project.

Senator EVANS. Mr. Chairman, I just wondered, if in addition to your last question they could also rank them, not just by cost but in cost per—not just cost per acre foot of storage, but cost of acre foot of storage usable each year. In other words, some have a lot of storage, but you could only use a certain amount of that storage during the dry years. The refill capacity is low and others can be refilled much more quickly.

You know, in your view what would be the most effective measure of true cost? It isn't as simple as just the total cost divided by the total storage, is it?

Mr. KEYS. That's correct. Some of them we can do that for, Senator Evans. Others we did not take far enough to know what the yield would be from them before we dropped them out. We can provide that information for some of them.

Senator EVANS. Particularly Bumping Lake and Wymer, which are the two most important?

Mr. KEYS. Yes.

[The information follows:]

Answer: The major storage site screening process took place in 1982 and 1983. Potential storage sites were identified from earlier studies made by Federal, State, and local entities; survey of topographic maps for any additional storage sites; and suggestions from public groups and workshops. Storage sites that had minimal water supply availability or storage capability were dropped early in the screening process.

By January 1982, 35 sites had been identified; 4 of the sites were located within the Yakima Indian Reservation. These sites were screened on the basis of environmental, social, engineering, legal/institutional, and economic factors. The screening was reviewed at public meetings and recommendations provided to the Director of the Bureau of Reclamation's Pacific Northwest Region and the Director of the Washington State Department of Ecology. As a result 24 sites were eliminated, leaving 11 sites (3 were on the Yakima Indian Reservation) for further evaluation. Further study was made of the remaining sites and all except Bumping Lake enlargement, Wymer, and three on-reservation sites were eliminated. The Cabin Creek site which was not included in the original screening was identified later, evaluated, and eliminated.

Table 1 summarizes the results of the 1982 evaluation of the storage sites including the reasons sites were dropped. The cost criteria for retaining sites was $1,000 or less per acre-foot of storage or up to $1,500 per acre-foot of storage if hydroelectric potential was good.

On-reservation sites recommended for continued consideration at that time are currently included in the on-reservation studies being conducted by the Yakima Indian Nation and are still being evaluated. These are the Satus, Simcoe, and Tampico sites.

The East Selah reregulating reservoir, which is an offstream reregulating facility of less that 3,000 acre-feet, is not a true storage site and has been evaluated separately.

In 1983, the study team reevaluted the storage sites recommended for continued consideration, and compiled additional information on physical, economic, environmental, and social aspects. Table 2 summarizes this information.

Cost per acre-foot of yield has not been developed because yield is a function of many factors including the total facilities in the system and operational goals. That is, yield from a reservoir will vary depending on what other facilities exist within the integrated operating system and the operating goals or purposes which affect the water release pattern. The goals for supplemental irrigation, new irrigation, and instream flows are still being negotiated among the interested parties. Until specific goals have been established it is not possible to accurately estimate the yield or cost per acre-foot of yield for Bumping Lake enlargement and Wymer. At this point, however, it appears that construction costs for a 142,000 acre-foot Wymer and a 400,000 acre-foot Bumping Lake would be similar but the Bumping Lake facility would provide larger benefits.

Table 1

Name	Location	Physical Capacity (acre-feet)	Cost per Acre-foot	Reason Dropped
Bakeoven	S.F. Tieton R.	35,000	$1,730	Cost
Bumping Lake enlargement	Bumping R.	458,000	$ 310	* (Retained)
Casland	N.F. Teanaway R.	60,000	$1,350	Cost
Cle Elum Lake enlargement	Cle Elum R.	485,000	$1,350	* (Retained)
Cooper Lake	Cooper R.	26,000	$1,100	Cost
Cowiche	S.F. Cowiche Cr.	13,000	$3,500	Cost
Devils Table	Rattlesnake Cr.	58,000	$1,100	* (Retained)
Dog Lake	Clear Cr.	minor	$5,000	Cost, Water supply
East Selah Reregulating	Yakima R.	3,000	NA	* (Retained)
Forks	Teanaway R.	390,000	$ 560	* (Retained)
Hole In Wall	Dry Cr.	12,500	$2,640	Cost
Horseshoe Bend	Naches R.	80,000	$1,500	Cost, Geology, Fish
Horsetail	Little Naches R.	88,000	$ 725	* (Retained)
Hyas Lake	Cle Elum R.	10,000	$2,000	Cost, Water supply
Little Rattler	Rattlesnake Cr.	110,000	$1,600	Cost, Big Game, Fish
Lost Meadow	Little Naches R.	25,000	$1,360	Cost
Lower Canyon	Yakima R.	350,000	$1,460	Cost, Railroad, Fish,
Manastash	Manastash R.	50,000	$1,740	Cost
Mile 4	Rattlesnake Cr.	45,000	$1,200	Big game, fishery
Minnie Meadow	S.F. Tieton R.	29,000	$1,600	Cost
Naneum	Naneum Cr.	40,000	$2,230	Cost
Pleasant Valley	American R.	140,000	$ 475	Fish, Recreation, Highway
Rattlesnake	Naches R.	375,000	$ 515	Fish, Extensive residential relocation
Rimrock Lake enlargement	Tieton R.	220,000	$1,410	Engineering problems
Satus	Satus Cr.	106,000	$ 700	* (Retained)
Simcoe	Simcoe Cr.	85,000	$ 650	* (Retained)
Soda Springs	Bumping R.	310,000	$ 685	Cost (compared to Bumping Lake)
Swauk	Swauk Cr.	72,000	$1,350	Fish, Wildlife
Tampico	Ahtanum Cr.	65,000	$1,450	* (Retained)
Toppenish	Toppenish Cr.	80,000	$1,300	Cost
Upper Canyon	Yakima R.	100,000	$1,050	Fish
Wapatox	Naches R.	130,000	$1,140	Fish
Waptus Lake	Waptus R.	35,000	$2,000	Cost
Wenas	Wenas Cr.	45,000	--	Under construction
Wymer	Squaw Cr.	320,000	$ 900	* (Retained)

Table 2, Part 1

Item	Bumping Lake Enlargement	Cle Elum Lake Enlargement	Devils Table	Forks
Reservoir capacity	458,000 acre-feet (425,000 acre-feet new)	489,000 acre-feet (52,700 acre-feet new)	58,000 acre-feet	390,000 acre-feet
Geology	Foundation appears acceptable	Foundation appears acceptable	Foundation is unsuitable for construction of a dam.	Extensive remedial treatment needed to strengthen the foundation
Cost per acre-foot of storage	$360	$1,150		$1,510
Stream habitat	Minor loss	Minor loss		Significant loss
Wildlife habitat	Minor winter range loss Moderate summer range loss	Moderate loss of winter range Minor loss of summer range		Moderate loss of winter and summer range
Upland game habitat	Moderate loss	Moderate loss		Moderate loss
Coniferous forest	Moderate loss. Concern over old growth forest	Minor loss		Minor loss
Archeological and historical resources	Moderate potential for adverse effects	Low potential for adverse effect		Low to moderate potential for adverse effects
Social and recreation impacts	Disruption at Goose Prairie during construction Loss of 14 summer homes Net increase in recreation (below dam)	Loss of most privately owned recreation facilities		Significant loss of private recreation land, retirement homesites Significant net increase in facility based recreation
Present status	Remains a viable site	Eliminated because of costs and recreation impacts 3-foot raise (15,000 acre-feet) is still under consideration (negligible impacts)	Eliminated because of geologic conditions	Eliminated because of costs related to damsite geology and available construction materials

Table 2, Part 2

Item	Cable Creek	Horsetail	Wymer
Reservoir capacity	150,000 acre-feet	183,000 acre-feet	142,000 acre-feet
Geology	Foundation requires extensive excavation	Foundation appears acceptable	Foundation appears acceptable
Cost per acre-foot of storage	$990	$480	$1,055
Stream habitat	Minor loss	Significant loss	Minor loss
Wildlife habitat	Moderate loss	Significant loss of winter range Moderate loss of summer range	Moderate loss of winter and summer range
Upland game habitat	Moderate loss	Moderate loss	Moderate loss
Coniferous forest	Minor loss	Moderate loss	No effect. Moderate loss of shrub-steppe
Archeological and historical resources	Unknown	Moderate to high potential for adverse effects	High potential for adverse effects
Social and recreation impacts	Minor	Trails, access, and campgrounds used by ORV's would be lost Significant net increase in facility based recreation	Significant increase in recreation, short distance from the city of Yakima
Present status	Eliminated because of costs related to the condition of the foundation	Eliminated because of adverse fish and wildlife impacts and cultural resource concerns	Still under consideration

Senator BRADLEY. If you could do it for more than two, that would be fine. We have a vote now.

One more question, that which relates to the Wapato Indian Irrigation Project. Is most of the acreage to be irrigated Indian owned?

Mr. KEYS. Yes, it is.

Senator BRADLEY. What is the planning status of the Wapato expansion?

Mr. KEYS. It is under study right now by the Yakima Indian nation. That is the portion of the study that I indicated to Senator Evans will probably be completed in 1991.

Senator BRADLEY. We have to rush to vote. I would like you to remain because I have another question I would like to ask both of you.

[Recess.]

Senator BRADLEY. The subcommittee will come to order.

Mr. Duvall, I would like to—I think you have offered your views on these two projects. I would like to ask you a question more generally on the issue of the drought that much of the country is experiencing now. In a lot of the areas served by the Bureau things are not in as bad a shape as elsewhere, is that not true?

Mr. DUVALL. That's correct.

Senator BRADLEY. Let me ask you this. Is there any way that you think that the Bureau could be helpful to these other areas that are severely hit by drought? Do you have any suggestions?

Mr. DUVALL. The Administration, Senator, has put together a task force that is looking at interdepartmental means of cooperation that would mitigate the impacts of the drought and they are expected to make a preliminary report on these in two weeks from the time they were formed sometime last week. Our people are participating in that dialogue and will be searching for ways where we can help other areas.

Senator BRADLEY. Mr. Keys, what do you say, if you were asked by the President this afternoon, what can the Bureau do to help this, what would you say?

Mr. KEYS. I would say, yes, we have a lot of capability to help both with short term and mostly with long term. Bureau projects are not built to deal with a drought this year. Our projects are built to deal with droughts before they happen.

A good example is in Eastern Oregon and in the Yakima Basin this year of how our storage is keeping us out of a drought. In Mr. Hatfield's area, the Owyhee project is in the third year of a drought, but they will have close to a full supply this year because there are three years of carryover water in the Owyhee Reservoir, and so we working people in the field with the Bureau feel that we can help in the short term and the long term and we are part of the effort that Mr. Duvall was talking about.

Senator BRADLEY. In short term, how can you help, say in Montana, or North Dakota or places that are really severely hit?

Mr. KEYS. Well, there are some things that we are doing to keep the shortages to a minimum in our region now that could be carried over there. We work with water banks in Idaho. We have an Upper Snake River water bank and one in the Boise River Basin where those people with storage that don't need it this year, or those people that have too little water to irrigate, in other words, to make a full irrigation cannot irrigate and then make that water available to other people.

We have a water conservation program underway with the Bonneville Power Administration where we advise farmers on how much water to apply, when to apply it and what crops to grow and so forth. So, those programs could be transferred over and used in Montana. They're using soil probes to determine soil moisture and how much water to apply and that sort of thing. We've had that underway with the Bonneville Power Administration for about three years as part of their energy conservation program.

They conserve energy. We conserve water, accomplish the same mission. There are other things that we're doing, such as looking at the types of crops being grown, that sort of thing.

Senator BRADLEY. What if you were directed to make available to irrigators the unallocated water supplies or a portion of the unallocated water supplies at Federal reclamation projects?

Mr. KEYS. For most of our projects there is little unallocated water. The fact of the matter is, there is no unallocated water. There may be some uncontracted water, but all of the water is allocated to one purpose or the other.

Senator BRADLEY. What if we said uncontracted water?

Mr. KEYS. I would say that in most cases that water has already been made available. In our region we are selling uncontracted space short term through the water banks. That way we stay out of a speculation format and we have a mechanism in place that makes that water available.

Senator BRADLEY. If you looked at it systemwide, how much uncontracted water is there in the system?

Mr. KEYS. I could only speak for the Pacific Northwest Region which covers Washington, Oregon and Idaho and there is very little uncontracted space there. We have some minimum pool levels that are established for fish and wildlife, recreation, and water quality purposes. Uncontracted, there are only small amounts available.

Senator BRADLEY. Could you provide that for the record, systemwide?

[The information follows:]

Answer: (A) A list of uncontracted space in Idaho and Oregon reservoirs follows:

Idaho	Uncontracted Storage Space (acre-feet)
Anderson Ranch Reservoir	4,200 1/
Cascade Reservoir	351,049 2/
Deadwood Reservoir	106,561 3/
Minidoka (Lake Walcott) Reservoir	95,200 4/
Palisades Reservoir	52,480
Oregon	
Prineville Reservoir	82,700
McKay Reservoir	6,190

1/ Used to enhance Anderson Ranch powerplant generation.

2/ Potential contracts for about 30,000 acre-feet now under consideration. Public consideration of alternative uses of uncontracted space led to administrative action to set aside 250,000 acre-feet for minimum reservoir pool for water quality, preservation of fishery resources and recreation uses, and 5,000 acre-feet for future in-basin irrigation use.

3/ Public consideration of alternative uses of uncontracted space led to administrative decision to set aside 50,000 acre-feet minimum for preservation of fishery resources.

4/ The reservoir space is used to benefit upper Snake River reservoir system operations and replaces storage deficiencies in other reservoirs in poor water years.

(B) A list of uncontracted space in Montana, Wyoming, South Dakota, North Dakota, Nebraska, Colorado and Texas follows:

Bighorn River Basin Montana/Wyoming	Uncontracted Storage Space (acre-feet)
Yellowtail Reservoir	300,000
Wyoming	
Glendo Reservoir (North Platte River)	10,400
Boysen Reservoir	57,400
Buffalo Bill Reservoir	3,200 67,000 (temp.)
Upper Missouri River Basin Montana	
Canyon Ferry Reservoir	300,000 (approx.)
Tiber Reservoir	350,000
South Dakota	
Shadehill Reservoir	10,000 (approx.)
North Dakota	
Heart Butte Reservoir	7,000
Nebraska	
Lake Waconda	19,000 (estimate)
Colorado	
Ruedi Reservoir	48,000
Texas	
Twin Buttes Reservoir	65,000 (based upon current supply)

Choke Canyon Reservoir (Nueces River)	18,000 (temporary only)
Texana Reservoir	70,000 (M&I use or temporary irrigation)

Note: Trans-Basin diversions would be difficult if not impossible due to excessive costs, and the lack of conveyance systems to areas of need.

(C) The Central Valley Project (CVP) system in California has about 7 million acre feet (MAF) of its 8 MAF potential average water supply under long-term contracts. Consequently, during average or above average water supply years, there is a significant quantity of CVP water which would be available for short-term or temporary contracting. However, at present the area is in its second drought year and water availability has been diminshed considerably. The water supply condition of the CVP is at a point where the remaining carry over storage in CVP reservoirs is projected to be 4.47 MAF on October 1, 1988, about 60 percent of the average CVP carryover of about 8 MAF. Therefore, there is no excess water in the system to be made available for short-term contracts.

Mr. **Duvall**. It's a somewhat different answer when you go to California where we operate under a different type of a contract. There are some uncontracted water amounts there. Your questions do not specify whether you would be interested in releasing water for purposes of moving it from one agricultural purpose to another agricultural purpose or whether you would be interested in releasing it for municipal purposes, as well.

At the present time, under the Warren Act, we cannot change the use of water from agricultural water to municipal purposes.

Senator **Bradley**. But you can, if you have uncontracted water in one region, you can make it available to another region for agricultural purposes?

Mr. **Keys**. No, that would be impossible because we are organized on a drainage basin concept. It would take intermountain diversions to go from one region to the other.

Senator **Bradley**. So, you could only do it within——

Mr. **Duvall**. That's within the region.

Mr. **Keys**. And that's because of physical limitations. It's not contractural or legislative, it's just physical.

Senator **Bradley**. Thank you both very much. I have no further questions. Senator Hatfield, Senator Evans, thank you very much. The next witness is John Robertson, Deputy Administrator, Bonneville Power Administration.

STATEMENT OF JOHN S. ROBERTSON, DEPUTY ADMINISTRATOR, BONNEVILLE POWER ADMINISTRATION, DEPARTMENT OF ENERGY, ACCOMPANIED BY JAY MARCOTTE, PROJECT MANAGER, UMATILLA BASIN, AND TOM CLUNE, PROJECT MANAGER, YAKIMA BASIN

Mr. **Robertson**. Good afternoon, Mr. Chairman.

Senator **Bradley**. Welcome to the Subcommittee, Mr. Robertson, please proceed.

Mr. **Robertson**. Thank you very much. Before I proceed, I would like to introduce Mr. Tom Clune, who is the project manager for the Yakima Basin for Bonneville and Mr. Jay Marcotte, project manager of the Umatilla Basin. They're here to answer any specific questions the Committee may have in regard to these two pieces of legislation.

Mr. Chairman and Members of the Committee, I'm pleased to have the opportunity to come before you to discuss the Umatilla Basin Project Act. My name is Jack Robertson, Deputy Administrator of the Bonneville Power Administration (BPA).

Since passage of the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act), Bonneville has aggressively met its fish and wildlife obligation and has expended over $120 million on capital facilities and revenue funded projects. Our costs reach nearly $650 million with estimates of foregone revenues for water budget and spill, cost of operations and maintenance, depreciation and annualized investment, interest on capital investment are also included.

The bill would authorize $42 million to the Secretary of Interior to design, construct, and operate pumping plants and other facilities for the Umatilla Basin Project. You will be pleased to know that some project activities which were authorized last year by the Congress in connection with the Department of Energy appropriations are already being implemented.

The bill seeks to mitigate losses to anadromous fishery resources by improving Umatilla River flows. In accomplishing this, the bill requires that BPA provide electricity for pumping water from the Columbia River, into project irrigation district facilities in exchange for water presently withdrawn from the Umatilla River. The bill also provides an opportunity to irrigation districts participating in the flow enhancement to obtain additional irrigation water by utilizing the pumps when they are not needed for pumping water for the purpose of fish flows.

Mr. Chairman, we have serious concerns with the funding responsibilities and the effects such obligations could have on BPA ratepayers in the Pacific Northwest. We also believe that the bill needs technical revisions to provide consistency with the Regional Act. My comments today clarify these issues and concerns and offer possible solutions.

Under the Regional Act, we have responsibility to protect, mitigate, and enhance fish and wildlife to the extent that these resources are affected by Federal hydroelectric projects. Because the damage to the Umatilla's fishery resources are a result of irrigation practices, and not from hydroelectric development, we are not obligated to make fish investments in the Umatilla Basin.

However, the Regional Act does provide us the authority to invest in certain fishery improvements in the Umatilla, as off-site mitigation for hydropower fish losses elsewhere. We previously determined that off-site mitigation to improve fish passage conditions, fix degraded habitat and build new sources of fish for the Umatilla are appropriate. We based our decision on assurances from fish managers that our investments would yield solid returns in terms of increased fish production and existing flows.

To date, we have invested $7 million and we plan to spend an additional $13 million on Umatilla fishery improvements. For this $20 million plus investment, we hope to increase the salmon and steelhead runs back to the Umatilla by about 19,000 fish per year.

This bill seeks to increase the existing flows by pumping water from the Columbia River to replace water that irrigators would otherwise draw from the Umatilla River. We are informed that this enhancement is expected to further increase the Umatilla fish runs by another 17,400 fish and would come to a capital cost of $42 million and annual power costs of $635,000 plus wheeling costs of $172,000. In light of our present commitment of $20 million in Umatilla, we do not feel that any further investments or expenditures by BPA ratepayers are appropriate.

If Congress authorizes additional pumping solely for irrigation purposes when pumping capacity is in excess of that needed for fish flow purposes in the Umatilla River, then S. 1613 should require that power be provided at a cost equal to our priority firm rate to public agencies.

The bill presently requires BPA to provide such power at irrigation subsidy rates, between two to three mills. The difference in power cost between the priority firm and irrigation subsidy rates could approach $80,000 annually. We strongly recommend that the bill be amended to require that irrigators pay the priority firm rates normally charged Federal agencies and preference customers.

It is our understanding that all of the bills' costs will be allocated to mitigation of anadromous fish species and that according to section 6, these costs are nonreimbursable. Consistent with this understanding, BPA recommends that the bill state that any costs actually allocated to irrigation be solely an obligation of irrigation beneficiaries, so that any additional subsidy by BPA in the form of irrigation assistance is precluded.

Our final concern deals with provisions in the bill which provide for interim use of existing irrigation pumps to provide limited flow enhancement until the project facilities are operational. The bill requires that BPA provide power to run existing pumps for this purpose. BPA has the authority to do this under the Regional Act. We made available $45,000 last year and $30,000 this year for such pumping purposes.

A problem with interim pumping is the difficulty it presents, with providing adequate amounts of water at the right time in the right places. Another problem is that the actual benefits to fish are unknown. We have no evidence to indicate the success of interim pumping.

It is important to note that the Northwest Power Planning Council is presently considering amending its fish and wildlife program to clarify the Umatilla pumping measure. Concern over interim flows has triggered this public process. If BPA is persuaded through that review that interim flow enhancement efforts would achieve substantial benefits to migrating fish, then BPA would provide funds for such measures under our existing authority.

But, we believe statutory direction at this time is premature. We therefore recommend that section 8, which authorizes the interim pumping, be deleted from the bill.

In conclusion, the bill has the potential to enhance the Pacific Northwest salmon and steelhead resources and we commend the efforts to bring interested parties together for that purpose.

However, because of the large investment BPA has already made in the Umatilla Basin, we are opposed to BPA having any further obligation to repay the $42 million provided in this legislation. We are also concerned that this bill not require BPA to pay any pumping costs. I thank you for the opportunity to present our views and we'd be glad to answer any questions you may have.

Senator **Bradley**. Thank you very much, Mr. Robertson.

Senator Hatfield.

Senator **Hatfield**. Thank you, Mr. Chairman. Mr. Robertson, could you tell me what rate is charged to other Federal projects as it relates to the priority firm rate that was used for the cost benefit ratio in the Umatilla Project? What is the normal rate type or classification of rate that is charged to other Federal projects?

Mr. **Robertson**. Well, the average rate Bonneville provides to its customers, to its Federal agencies, and to its priority firm customers is 23.8 mills. That rate alters, however, with the time of season and with day and night.

For example, during April through August, that rate reduces to 21.8 mills and then there is an additional, what we call irrigation discount which we have provided to irrigators which brings the rate down to about 17.8 mills.

Senator **Hatfield**. Is this the usual rate structure that you charged other Federal projects by requiring them to pay the priority firm rate? You don't charge a lesser rate to other Federal projects?

Mr. **Robertson**. We charge, Senator Hatfield, varying rates, depending on the purposes of the project. I believe I can provide it for the record, if you like, the specifics of that.

[The information follows:]

Each federal hydroelectric project was authorized by Congress and contructed to achieve one or more purposes in addition to power production such as flood control, navigation, and irrigation. For instance, Bureau of Reclamation projects were constructed primarily for irrigation programs. Through enabling legislation and subsequent amendments, Congress has developed general guidelines for both power and irrigation programs that apply to projects owned and operated by the Bureau. Legislation enabling some of the Federal projects operated and owned by the Corp of Engineers also contain provisions directing assistance be provided to irrigation programs.

In marketing the power generated from these Federal projects, Congress has directed that some of this power be dedicated first to irrigation use. The rates for the power dedicated to irrigation from these facilities are established by contract and mutually agreed to by all parties. Each contract contains different terms and conditions and consequently different rates ranging from approximately 0.05¢ per kilowatthour for the Columbia Basin Project, which receives its power from Grand Coulee, to about 0.8¢ per kilowatthour for projects such as the Owyhee Project, which receives power from Anderson Ranch.

The Umatilla project differs from other Federal projects that have irrigation purposes in that there is no generation and the pumps are being built for and dedicated first to providing water for fish. When not needed for fish purposes, they may be used for irrigation programs. The Umatilla project can be distinguished from past and future Federal projects where irrigation programs have a higher priority to power. BPA's Priority Firm Power rate is the rate at which BPA sells to Federal agencies and is an appropriate price for any power the Bureau uses to make water available to irrigators from the Umatilla project. Currently BPA's Priority Firm Power rate has a 4.6 mill discount applied for irrigation loads. To the extent the Bureau might limit such deliveries to BPA's off peak period---10pm to 7am, Monday through Saturday, and anytime Sunday - the current rate, April - August would be about 1¢ per kilwatthour.

Senator **Hatfield**. I would like that for the record, if you could, please.

Regarding the interim pumping power, everyone including the Indians and irrigators and all the other people in the Northwest feel that your provision of the interim pumping power is a very appropriate action and we are very appreciative of it.

Now, as the Northwest Power Council undertakes the matter of looking at pumping power and such over the mitigation of fish and wildlife in their rule making authority, and I believe that there is a good chance from the signals that I've gotten that they will proceed on this basis—should you not have any objection from Bonneville Power, will you provide the funding?

Mr. **Robertson**. I believe the Council is planning on going into rulemaking on the question of interim pumping in July. We will be looking at that rulemaking effort very carefully, obviously. We will review, as we have to under law, the recommendations of the Council for adequacy when that is done and so I think a statement at this point would be prejudgmental of that, but we certainly will review it very carefully.

Senator **Hatfield**. You mentioned that BPA is opposed to providing additional pumping power solely for irrigation purposes. I am sure that these matters have been going on for some time, but I hope can be worked out. Could you expand a little bit on the BPA's current policies and rate schedules for irrigation projects? In other words, what is the best rate BPA could give the irrigators to be able to support this portion of the project?

Mr. **Robertson**. As I indicated earlier, Bonneville's rates to irrigators vary depending on season and time of day and I think I mentioned that there is a discount applied to our standard rate of 23.8 mills during April through August in the summer months, which is the critical period of time we are speaking of here. The rate goes down to 21.8 mills. There is a further discount, irrigation discount, which we applied in the last rate case, which brings the irrigation prices to 17.8 mills. During the summer months the water could be pumped in off-peak hours, the price charged would be 10.5 mills.

So, an awful lot depends on when the power is pumped and obviously to the maximum extent possible, we would like to encourage that if the legislation passes, that the power associated with pumping would be shaped into the hours which would be least costly.

Senator **Hatfield**. One last question. Have you done your own independent projection on fishery benefits of this project or have you relied strictly on the Oregon Department of Fish and Wildlife and the National Department?

Mr. **Robertson**. Our numbers, which we provided for the record as 17,000 plus fish associated with this project, were provided to us by the Oregon Department of Fisheries.

Senator **Hatfield**. Do you plan to make your own study on the benefits?

Mr. **Robertson**. I'd have to defer to Mr. Marcotte.

Mr. **Marcotte**. I think we feel pretty satisfied both with ODFW numbers and the fact that we've had an opportunity to work those out with the other regional entities, that there isn't any need for any further analysis.

Senator **Hatfield**. Thank you, Mr. Chairman.

Senator **Bradley**. Senator Evans.

Senator **Evans**. We haven't heard Mr. Robertson's testimony yet.

Mr. **Robertson**. Would you like me to give you my testimony on the Yakima Bill?

Senator **Bradley**. Yes.

Mr. **Robertson**. All right. Mr. Chairman, the BPA has serious concerns with S. 2322 due to the provisions of the legislation which would place an unfair burden on electric ratepayers in the Pacific Northwest and we respectfully request that the Committee consider amending the bill to address these concerns.

Under the Regional Act, BPA has responsibility to protect, mitigate, and enhance fish and wildlife to the extent that these resources are affected by Federal hydroelectric projects. Because the damage to the Yakima's fishery resource is primarily a result of irrigation practices and not significantly a result of hydroelectric development, BPA is not obligated to make fish investments in the Yakima Basin. However, again, the Regional Act does provide Bonneville the authority to invest in certain fishery improvements in the Yakima Basin, as off-site mitigation for hydropower fish losses elsewhere.

Immediately following passage of the Regional Act, Bonneville began fishery enhancement work in Washington's Yakima River Basin. By 1983, BPA had entered into an agreement with the U. S. Bureau of Reclamation to rehabilitate outdated canal screens and fish ladders to improve the survival of both adult and juvenile salmon and steelhead. This fish passage work is scheduled for completion in 1989, at a total cost of approximately $55 million. BPA's share of this cost is $15 million. The completed passage facilities have been evaluated while in operation and have proven to be nearly 100 percent effective.

BPA's major project in the Yakima Basin consists of a hatchery facility for both the Yakima and Klickitat subbasins of Washington State. This facility, together with associated research operation and maintenance until the year 2000 is expected to cost nearly $40 million.

Since the project's inception, Bonneville has worked and will continue to work very closely, with State and Federal fish and wildlife agencies, the Yakima Indian nation, as well as agricultural interests.

Our investment in the Yakima Basin will be substantial. We estimate that BPA ratepayers will invest nearly $70 million in the Yakima Basin by the year 2000. We are committed to providing the most cost-effective fishery enhancement projects for the Yakima Basin and are convinced that these measures will result in more efficient use of water and increased fisheries benefits.

Mr. Chairman, we do not support S. 2322. We have some serious concerns which we hope the Committee will consider. First, any replacement power which the Federal Columbia River Power system may provide to assist in meeting instream flow requirements should be made available at the same rates applicable to BPA preference customers. This would meet the statutory requirement that BPA power sales recover costs and would avoid an additional subsidy to irrigation.

Second, we believe that section 7 of the bill requiring us to provide replacement power for Pacific Power and Lights (PP&L) Wapatox facility to meet instream flows is inappropriate and should be deleted. PP&L should not expect BPA rate payers to pay fish and wildlife costs associated with its projects.

Finally, we are concerned that the addition of facilities, as described in this bill, might be treated so as to increase our irrigation assistance liability to the U.S. Treasury. We wish to point out that we already provide a substantial subsidy to irrigation water users by paying capital costs beyond the ability of water users to repay. At the end of fiscal year 1987, there was a total of $131 million of irrigation repayment liability outstanding in the Yakima Basin. We are responsible for $11 million of this liability, with irrigators being responsible for the balance of $120 million.

At the close of fiscal year 1987, BPA's total liability for the irrigation assistance in the Pacific Northwest was $682 million. We do not believe that BPA should be expected to contribute additional funding, including irrigation assistance for facilities in this bill.

In conclusion, Mr. Chairman, we cannot support the provisions of S. 2322 affecting the Bonneville Power Administration. In light of our already substantial investment in the Yakima Basin for fisheries purposes, we believe it is unreasonable that BPA ratepayers should be required to bear any further costs. I thank you for the opportunity to present our views and again would be pleased to answer any questions you may have.

Senator BRADLEY. Thank you very much, Mr. Robertson. I think we ought to recess for five minutes so that we can go vote and then we will be back in five minutes.

Senator EVANS. We have two votes back to back and so we'll be a little longer.

Senator BRADLEY. Well, it could be in 30 minutes, unless Senator Evans, did you have a quick question? Go right ahead.

Senator EVANS. OK. First, I presume that this testimony is as washed by OMB, rather than your original testimony?

Mr. ROBERTSON. This was reviewed by the Office of Management and Budget, yes.

Senator EVANS. I won't go any further than that.

You mentioned the fact that the investment on the Yakima are essentially for irrigation and we are not responsible for the loss of fish runs. But, isn't it true that there's a significant damage to fish runs by the main stem dams on the Columbia and no fish can get back to the Yakima River Basin without first going over what is it, four dams that are below the Yakima? Wouldn't that put the hydroelectric dams on the main stem directly involved in fisheries loss?

Mr. ROBERTSON. Yes, they clearly are and we have established quite a substantial program to rehabilitate losses from those dams.

Senator EVANS. You mentioned PB&L's Wapatox facility. You should not expect BPA ratepayers to pay fish and wildlife costs associated with this project. I suppose that's one way to look at it, but isn't it also true that what you are trying to get here is water back in the river for fisheries' purposes and that the amount that you pay for replacement power, in essence, is part of fisheries' mitigation, isn't that correct?

Mr. ROBERTSON. Yes.

Senator EVANS. You just don't like to pay it to private power companies?

Mr. ROBERTSON. We think that there's an issue of precedence there which concerns us, and which we'd be glad to elaborate on.

Senator EVANS. But don't we in our conservation programs under Bonneville pay a good deal to private homeowners to help them in their conservation practices?

Mr. ROBERTSON. We do have that in the private utility area, yes.

Senator EVANS. What's the difference?

Mr. ROBERTSON. Well, in this case again we are implementing the Council's plan, following the guidance of the plan. BPA funding for repair and use of the Wapatox facility is not included in the Council's plan. We try the best we can to follow the encouragement of the Council and BPA's commitment of funding to Wapotox is not mentioned. It is not, because of its early date of construction. It's not a part of the Federal Power Act and Regional Act considerations of the Council.

Senator **Evans**. Would you have real difficulties with this, however, if it added up on the balance sheet as a part of your fisheries off-site mitigation? What difference does it make to Bonneville as long as you get credit for the monies you have invested?

Mr. **Robertson**. Again, Senator Evans, I think the important thing to us is certainly what monies are there but also the precedence that this might have for future similar claims around the region and we want to be careful about that.

Senator **Bradley**. The Committee will stand in recess for 25 minutes and the Committee will be reconvened by Senator Conrad and then we will resume questions of you and I apologize for the witnesses who have come so far for this hearing, but this is life in the United States Senate, interrupted by 15 minute, 25 minute votes. The Committee will stand in recess.

[Recess.]

Senator **Hatfield** [presiding]. The Committee will come to order. I wonder if you, Mr. Robertson, and your BPA people would mind stepping aside for a few moments, in order to allow the first panel of the Umatilla to speak. They have a 5:30 plane that they are trying to catch. At this time, we would like to invite Mr. Minthorn, Mr. Patawa, and others who may be on that panel.

STATEMENT OF ELWOOD PATAWA, CHAIRMAN, BOARD OF TRUSTEES, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION, MISSION, OR

Mr. **Patawa**. Thank you, Mr. Chairman. My name is Elwood Patawa and I'm the Chairman of the Board of Trustees, elected governing body of the Confederated Tribes of the Umatilla Indian Reservation. I am pleased to appear before you to testify in support of Senate Bill 1613, the Umatilla Basin Project Act. The Umatilla Basin Project addresses serious longstanding water use conflicts resulting from past Federal actions in the basin. The Federal irrigation project dries up the lower Umatilla River.

Once productive salmon runs have been exterminated. This has had serious adverse social, economic, and cultural consequences for our people. It has pitted us against our non-Indian neighbors in a desperate, mutually destructive struggle for economic survival.

It has been almost a decade since tribal representatives first appeared before Congress on this issue. At that time we requested help in searching for a constructive solution. Congress responded with study funds channeled through the Bureau of Reclamation.

The bill you have before you today is the culmination of almost a decade of grassroots, tribal-nontribal cooperation that Oregon Senator Mark Hatfield has called "a role model" for the nation.

As elected representatives of the Umatilla Tribe, today we appear before you on a government-to-government basis. We seek your support for the hard-won product of those years of cooperative effort made possible by past Congressional support. Others will address technical details of the project. Later I will speak briefly to some of its important attributes.

Our most important mission today, however, is to convey to you and to other members of the Committee how important it is to our tribe that this project be quickly authorized and constructed to restore fish runs and fisheries to the Umatilla River. Salmon have always been key to the social, economic and cultural well being of the Umatilla people. The right to fish was one of the paramount rights our forefathers reserved in the 1855 treaty ceding a vast area of land to the U.S. Government.

Contrary to the solemn promises of the treaty, beginning in 1914 Federally-sponsored irrigation developments blocked and ultimately eliminated salmon runs and tribal fisheries in the Umatilla River. Federal hydroelectric projects on the main-stem Columbia River and to a lesser extent, non-Indian fisheries, virtually eliminated all of our people's traditional fisheries throughout a vast area.

From the beginning, the Umatilla Tribe resisted this erosion of the treaty-reserved right to fish. After decades of conflict in and out of court, the courts upheld the tribe's right to share the harvest of salmon and steelhead in the Columbia River and tributaries, to protect fisheries habitat in the usual and customary fishing places.

In passing the Pacific Northwest Electric Power Planning and Conservation Act of 1980 Congress mandated the restoration of fish and fisheries devastated by construction and operation of the Federal Columbia River Power System. In addition, the 1985 United States-Canada salmon treaty mandates rebuilding natural salmon runs by 1998.

These and other actions have made it possible to get fish back to the mouth of the Umatilla River. Now action is required to replace some of the water diverted by the Federal irrigation project in the Umatilla River so fish may enter and return to reservation waters.

The Umatilla Tribe could have turned to the courts for relief. We chose to first try cooperation instead of confrontation. With funding support from Congress, tribal and nontribal people of the Umatilla Basin struggled for years to find a constructive solution to the serious water use problems created by the Federal irrigation project. The resulting Umatilla Basin Project before you today is not the most desirable solution. It is a pragmatic, least-cost solution.

Unlike many tribal/nontribal water use conflicts elsewhere in the nation, we are fortunate there is an abundance of water to solve the problem in the Umatilla Basin. The Columbia River, the fourth largest river in North America, flows past our doorstep at an average daily rate of 180,000 cubic feet per second. All that is required is to trade irrigators a small fraction of this water so they can leave a like amount of Umatilla River water in the river so fish may enter and pass upstream. The Umatilla Basin Project would make this water exchange possible.

The Confederated Tribes are not insensitive to the current serious federal budget deficit. Nonetheless, we believe the Federal Government has a prior obligation under the treaty to redress the problems caused by the Federal irrigation project which for more than 70 years has taken a high toll from our people.

The treaty obligation notwithstanding, tribal and nontribal people of the Umatilla Basin and region worked hard to devise a win-win project that is responsive to the current fiscal climate. As Senator Hatfield stated in introducing Senate Bill 1613, "The Umatilla Basin Project presents the Federal Government a unique opportunity to meet its treaty obligations in a way which will turn a substantial economic profit to the local area, the region and the nation."

The Umatilla Basin Project has a positive benefit/cost ratio. The local, state and regional cost share is approximately 30 percent of total Umatilla River fishery restoration construction cost and more than 75 percent of total annual operation, maintenance and replacement costs.

More than $20 million of non-Federal ratepayer funds have been obligated by the Northwest Power Planning Council pursuant to the fishery restoration provisions of the Northwest Power Act. This local cost share includes major capital construction costs for fish passage and hatchery facilities, as well as providing approximately $600,000 of electrical energy per year to run project water exchange pumping facilities.

The project has widespread benefits. It would contribute an estimated 112,000 salmon and steelhead to tribal and nontribal fisheries throughout the Northwest. It will complement other non-Federal and Federal investments in the region. The project will roughly double benefits of regional ratepayer expenditures in the Umatilla Basin under the Northwest Power Act. It will significantly enhance benefits from Federal taxpayer investments in fish passage facilities at Federal main-stem Columbia River hydroelectric dams.

The project will provide badly needed cultural, social and economic development opportunities for the tribe and help diversify the troubled nontribal agricultural economy of the area.

In summary, Mr. Chairman, the Umatilla Basin Project is not an irrigation project, nor does it address the separate issue of the tribe's "Winter's Rights" to water for on-reservation use. The tribal and nontribal people of the Umatilla Basin and their supporters throughout the region have done their best to bring before you a unique least-cost and cost-effective means for the Federal Government to begin meeting its Umatilla River fishery obligations to the Umatilla Tribes while keeping its existing commitments to nontribal participants in the Federal irrigation project.

Now it is up to Congress to do its part. The stakes and potential for conflict are high, and we urge quick authorization and implementation of the Umatilla Basin Project. Thank you for the opportunity to testify in support of Senate Bill 1613.

Senator CONRAD [presiding]. Thank you very much. We appreciate that testimony. Next we will hear from Mr. Hadley Akins, the Executive Director of the Project from Pendleton, Oregon. Welcome.

Mr. AKINS. Mr. Patawa would dearly love to catch a 5:30 plane, unless you have some questions.

Senator CONRAD. Let's excuse him so that he makes sure that he gets that plane.

Mr. PATAWA. Thank you, Mr. Chairman.

Senator CONRAD. Thank you very much.

STATEMENT OF HADLEY AKINS, EXECUTIVE DIRECTOR UMATILLA BASIN PROJECT STEERING COMMITTEE, PENDLETON, OR

Mr. Akins. Thank you, Mr. Chairman. I'm Hadley Akins, Pendleton, Oregon. I'm Executive Director of the Umatilla Basin Project Steering Committee, appearing here in support of Senate Bill 1613. Our office and activities have been funded since 1986 by the State of Oregon for the express purposes of coordinating problem solving efforts and of directing public relations and political activities to put this bill forward. In fact, Governor Neil Goldschmidt has publicly stated that this is the number one water project in the State of Oregon, and his letter of support, I believe, has been entered into the testimony.

The Oregon legislature has also passed specific legislation to assist this Project's development. I have also submitted strong letters of support from the Oregon Wildlife Federation, the Oregon Environmental Council and Oregon Trout, Incorporated, three of the strongest environmental and resource protection agencies in the State of Oregon.

Our committee first met six years ago as a large ad hoc group with attendees representing the Confederated Tribes of the Umatilla Indian Reservation, several irrigation districts, Umatilla County, the cities of Pendleton and Hermiston, and a number of government agency and public resource people. The problem was that the tribes were trying to reestablish an anadromous fishery in the Umatilla River, and there was insufficient water in the river to support the fish.

As you have heard before, the Tribes and the United States government had signed a treaty in 1855. The tribes ceded over 6,000 square miles of their homeland to the United States and in return were guaranteed protection of their fishing and hunting rights on the reservation, as well as off the reservation at their accustomed and usual sites.

You have also heard that the Bureau of Reclamation came along and encouraged, in fact built irrigation projects that encouraged the use of water to be diverted from the Umatilla River and its tributaries, and then the State of Oregon came along in 1909 with its first water code and this also gave the irrigators legal rights to the water and encouraged them to hurry and take advantage of this free water. The results, of course, of these actions are that the Umatilla River is completely dewatered during times critical to fish passage, but also that a $50 million irrigated economy is in place, on which Umatilla and Morrow Counties are heavily dependent.

The final nail in the fish coffin was driven in the 1930's when construction started on the many dams on the Columbia River. These dams not only blocked the natural passage of fish, but also inundated many of the historical Indian fishing grounds. The Treaty of 1855 was now completely abrogated.

I'm telling you this story and I'm sure you've heard it before in other aspects of Indian, non-Indian disputes nationwide, but it does illustrate the fact that neither of the principle contenders for Umatilla River water is to blame for the current controversy. Each is striving only to protect the resource that was guaranteed to him by a government entity.

We left our first meeting with little hope of any success because the participants were so far apart that we didn't see any way they could ever get together and a compromise almost seems impossible. Political constraints and litigation possibilities and other problems gave us an almost intolerable situation. We knew going in that budget dollars would be tight and that significant cost sharing was a must. We knew going in that any plan that appeared to subsidize water or irrigation was a no-no. We also knew going in that we were literally fighting for our economic lives, and that lack of an acceptable plan would trigger litigation in which everyone would lose. And by everyone, I mean the tribes, the consumptive water users, the Bureau of Reclamation, the State of Oregon, and generally all those others who would be caught up in this economic disaster and it would polarize important segments of our citizenry.

With all this in mind, we worked six years to devise a cooperative program. All parties have given up something in order to attain something. We think this is the way we do things in a democracy and this is the way we overcome the old divided we fall mentality. But, without Congressional approval of this project, we will acknowledge that we do not intend to recognize Indian treaty rights, and that we will probably renege on a valid contract to deliver water to irrigators. We will also demonstrate to both Indians and non-Indians that we are not really interested in their attempts to settle disputes peacefully, but would just as soon see them go to war, this time in the courts instead of on the battlefield.

The Confederated Tribes of the Umatilla Indian Reservation, despite court decisions reaffirming Indian rights to fish and water, have delayed legal action to regain those rights in order to seek a cooperative solution. They recognize their obligation to be good citizens and to find a middle ground between their desires and the needs of the local economy. The irrigators are trading their historic water rights and a system that works for a new source of water, but no additional water, to be delivered through a new system that would require them to make significant changes in their facilities and scheduling. The State of Oregon has passed legislation facilitating water exchange and has obligated itself to protect resulting instream flows from out-of-stream diversions. We can expect no greater cooperation than this. The missing element is now Federal participation.

We knew we had a budget problem going in and it offers a convenient excuse not to build domestic projects. Realizing this, we discarded plans in the beginning that might have solved all the Basin problems and might have completely solved the Indians' reserve water right problems. We could have legitimately supported these large upstream impoundments and other kinds of improvements, but we opted instead for a least cost plan that provides optimum instead of maximum benefits. We opted for a plan that will repay our investment and your committee staff has stated that this project has the highest benefit-cost ratio in its recent memory. We negotiated a plan that partially repays a 130 year old debt to the Indians with the least harm to non-Indians. Thus, we are offering you a least cost opportunity to reassure both parties that the United States government wants to become an honorable partner.

We have been aware from the beginning that some factions would regard the Project as just another scheme to further exploit a dwindling natural resource and to subsidize irrigators. Nothing could be further from the truth. The plan we offer will, in fact, deny further exploitations, and will restore a natural resource that has been gone for seven years. It is a cost effective and an honorable way out of an embarrassing dilemma.

Our premise throughout the planning and negotiating phase has been to provide irrigators with only the historic supply of water at costs they would expect to pay for that supply. A basic element of any water exchange is a concept that you cannot receive more water than you had in the first place. Thus, the irrigators would not be provided more water, but would receive only a one for one exchange. Since there is no additional firm water supply being provided for irrigation, it is difficult for us to see why irrigators should be expected to share in project costs.

The project has been sized only to meet peak public demands for fish needs alone and not to supply water for any irrigation. We do recognize, however, that the system envisioned in the plan will underutilize the system at certain times of the year and it would be an economic waste not to be able to take advantage of any excess capacity. There are other entities who foresee a need for additional water. To allay the fears regarding a subsidized water supply and to make available the underutilized portion of the system, we are proposing that the following language be added to Section X of the bill, "To the extent additional capacity is available in the project pumping facilities, the Secretary is authorized to enter into contracts to furnish water for municipal, industrial, or other miscellaneous purposes at rates to be determined by the Secretary." We feel this is our last and only shot at a reasonable solution to our problems in the Umatilla Basin. The Basin has been studied to death for over 50 years and we've got volumes of plans and solutions, none of which have ever reached a local consensus.

Now we have a 100 percent local agreement. We tried to anticipate and apply to every criticism we could foresee, but we are at the point where another year on the shelf will split our ranks and no one that we can envision will ever have the energy, inclination, or opportunity to attack this problem cooperatively again.

I thank you, Mr. Chairman, for the opportunity to speak before you and we urge your action soon on this bill.

Senator CONRAD. Thank you very much, Mr. Akins. We appreciate your testimony. Let me just indicate the situation that we confront. We have 11, as I counted, witnesses remaining. This hearing was supposed to have ended five minutes ago. Senators have other schedules, other commitments that they have made. But, I think we have an obligation to make sure that each of the witnesses who is here has a chance to be heard and so it's my intention to now go to a three minute rule which we will enforce very strictly. In that three minutes, we will ask you to summarize the testimony that you have. We will accept your full written statement for the record.

We will also then have some time for questions, although it will be very limited, given the way the schedule has developed. We apologize to those of you who have worked very hard to put together testimony, but I think you can understand that due to the schedule of votes this afternoon, the hearing has been interrupted repeatedly and this is the only way that we will be giving an opportunity for everyone who has traveled an opportunity to be heard and to make sure that they have a chance to express themselves.

So, with that let me just indicate that we will have a three minute rule. I ask you to summarize your testimony and then we will include your full written statement in the record.

With that we will go to Mr. Bob O'Rourke, an attorney representing various irrigation districts from Pendleton, Oregon. Welcome.

STATEMENT OF BOB O'ROURKE, ATTORNEY, STANFIELD, WESTLAND, WEST EXTENSION, AND HERMISTON IRRIGATION DISTRICTS, PENDLETON, OR

Mr. O'Rourke. Thank you, Mr. Chairman. I am here on behalf of four districts, 2,100 water users, 50,000 acres, successors to the settlers who were lured into the desert about 60 years ago by the U.S. Government. They were sold a bill of goods by the U.S. Government and I believe the Government was sincere at that time. Now the tribes have requested the water. It's like a fellow who sold the same car twice to two different buyers and now both buyers want to drive it at the same time.

Fortunately, we can produce that other car out of the Columbia River. The irrigation districts in an unusual manner of respect and cooperation with the tribes encourage the passage of this bill. Thank you.

[The prepared statement of Mr. O'Rourke follows:]

Senate Water & Power Subcommittee

Hearing on S. 1613

June 28, 1988

Testimony of Bob O'Rourke

- INTRODUCTION
- LAND AND CROPS
- FINANCIAL CONDITION OF WATER USERS
- THE UMATILLA RIVER AND ITS TRIBUTARIES
- THE EXISTING PROJECT
- THE PROBLEM
- THE SOLUTION

INTRODUCTION

My name is Bob O'Rourke. I am an attorney from Pendleton, Oregon. My office address is Box 490, Pendleton, Oregon 97801. I am appearing here today on behalf of four irrigation districts: the Stanfield Irrigation District, the Westland Irrigation District, the Hermiston Irrigation District and the West Extension Irrigation District. Those Districts are municipal entities formed under Oregon law and together, they serve approximately 2,100 water users, most of whom are farm families. The function of the Districts is to distribute water for irrigation. The Districts have assessment powers and can lien the lands which they serve. The boundaries of the Districts can be changed under Oregon law to accommodate changing circumstances.

LAND AND CROPS

The Districts deliver water to approximately 50,000 acres of land. The individual ownership units are not large. When the Indians occupied the 50,000 acres, the soil was sandy and the cover was sagebrush, rabbitbrush, cheatgrass and some cactus. Under present occupation the soil is still sandy but now it is covered by potatoes, alfalfa, corn, watermelon, pasture, wheat, barley and a few other crops. The sandy character of the soil does not lend itself to a good water-holding capacity. Without irrigation, the soil would receive very little water. The rainfall in the area of the four Districts varies from 7 to 9 inches per year.

FINANCIAL CONDITION OF WATER USERS

Neither the Districts nor the people they serve are making big money. They are above the poverty level but well below a level of prosperity. They are surviving. Almost all of the farms are owned and operated by families who live on the farms. Absentee ownership is at a minimum if it exists at all.

In order to stay in business, the farmers have had to borrow money, both on a long term and on a short term basis. The 50,000 acres of land is heavily obligated to local and outside banks, government agencies and other lending institutions. Substantial credit is also regularly extended to the farmers by chemical suppliers, vehicle and implement dealers, farming cooperatives, hardware stores, grocery stores and many others. For most of the farmers, the balance of farm income and farm expense is a very delicate one. The balance is too delicate to attract very many new participants. The economic condition leads to a rather inactive market for farms and this, in turn, leads to the presence of many older people on the farms.

THE UMATILLA RIVER AND ITS TRIBUTARIES

The economic condition of the farmers relates directly to and depends totally upon the amount of water which they can divert from the existing diversion and storage facilities on the Umatilla River. If the water users continue to receive water as they have in the past, most of them will probably survive. If they don't continue to receive the water, none will survive. The Umatilla River water, some diverted from direct flow and some diverted from storage is undeniably the life blood of the 2,100 water users for whom I am speaking.

The Umatilla River is not a large river. It is well contained within the basin especially in the areas where diversion and irrigation take place. The water diverted for irrigation is used several times before it finds its way to the Columbia River. Some of the irrigation water, after it has been used, percolates beneath the surface in the general areas of first usage and contributes substantially to both municipal and domestic well production. Some of the irrigation water returns to the Umatilla River, through a combination of seepage and waste ditches, where it is again diverted for irrigation. In some cases that usage is followed by a third use of the water from wells. Consequently, it is not only the immediate farming community which benefits from the existing projects but also a large number of others water users. Taken as a whole, the beneficiaries of the irrigation projects constitute entire communities, both urban and rural.

THE EXISTING PROJECT

Between 1906 and 1927 the Bureau of Reclamation constructed the Umatilla Project. The authorization was the Reclamation Act of 1902. The national policy was to reclaim the arid lands of the West. The Bureau of Reclamation was given the task.

Under that authorization and following that policy, the Bureau: studied the Umatilla River Basin, determined the amount of irrigable land, determined the amount of available water, determined the best way to put that water on that land, obtained water rights from the State of Oregon allowing for the diversion, storage and use of the water, acquired the lands upon which the facilities would be constructed, constructed the facilities, generally advertised the projects and encouraged settler participation, caused the settlers to form the four Irrigation Districts and then entered into long term contracts with the Districts obligating them to pay for the facilities.

Since the 1920's the Bureau has continued to: own the facilities, either operate directly or monitor the operation of the facilities, enforce Reclamation law as it applies to the lands served by the facilities, hold the water rights and collect payments on the contracts. The Government invested money and the time of its employees. The settlers invested their lives and savings. Obviously, the settlers trusted and relied upon the Bureau of Reclamation in making their investments.

THE PROBLEM

The seed of the problem was planted in 1855. That year the United States Government and the Confederated Tribes of the Umatilla Indian Reservation ("the Tribes") entered into a Treaty. The purpose of the Treaty was to resolve differences which existed before that time between the Tribes and the Government. By the Treaty the Government obligated itself to do certain things. It appears that one of those things was to make sure that a certain amount of water would remain in the Umatilla River for fish. The definition and extent of that duty has not been finally declared. Therefore, the

Districts do not concede any superior status to claims for water for fish. That matter is one for the courts and it is that judicial exercise that the Districts hope to avoid.

Several years ago the Tribes embarked on a fisheries program. Those people closest to the program have stated that the program will fail unless additional water is left in the Umatilla River. The program can be improved by including releases from storage into the manipulation of river flows. Leaving water in the Umatilla River for fish means not diverting it for fields. The only storage reasonably available is the existing storage of the Bureau which was constructed for irrigation.

Water for the fish or water for the fields. The Government sold the car twice and now both buyers want to drive it. Neither of the buyers caused the problem but one of them will be hurt unless the seller makes it right by both of them. Neither the Irrigation Districts nor any of their members, present or past, negotiated or signed the Treaty of 1855. Neither the Tribes nor any of their members, past or present, participated in the planning, construction or operation of the Government facilities which divert the water from the Umatilla River to the four Districts. For many years there has been a certain amount of bad feeling between the Tribes and the Districts. It may be that both sides saw the other as the cause of this problem. During the last five or six years the presence of the fish has brought a new sense of urgency to solving the problem. The Tribes and the Districts have come together with new respect for each other's needs and in this closer setting, both have gained a clearer vision as to who really caused the problem.

If the water remains in the River, the fish will live and the fields will die. If the water is removed from the River, the fields will live and the fish will die. The farmers, and the many communities which they sustain, know that they will all fail if their water is taken away. Just as surely as a plant will die if its water is taken away. If, instead of the fields, the fish die the Indian community will suffer. The extent of that loss is not easy for the farming community to measure. However, it must be assumed that the loss will be great.

THE SOLUTION

The solution is simple but it is not simple. It is simple in that the fellow who sold the same car twice to two different buyers must now produce another car. It is simple in that the second car in this case happens to be the Columbia River which is close to the Umatilla River and which still has more than adequate flows to meet the need.

The solution is not so simple in the technical sense. The introduction of water from one river into another to balance and accommodate water flows for fish migration is a considerable undertaking. In the last few years efforts have been made to affect fish movement in the Umatilla River by controlling flows. The Districts have participated actively in this, sometimes to the detriment of their water users. The Districts are sincere in their efforts to assist with the fisheries program. They have spent a large amount of time and money cooperating with the Tribes and others to better understand the water needs of the fish.

The Districts have been told that they will receive annually, free of any cost, an amount of water equal to their historical annual average diversions from both natural flow ard storage. However, the Districts would still be obligated to the Bureau of Reclamation on their existing contracts. The exchange water will come from the Columbia River. In return, the natural flow will be allowed to stay in the Umatilla River as needed by the fish. Additionally, a large block of stored water will be freed from irrigation use and applied to the control of river flows for fish use. Considering all of the mechanical and legal considerations, the Districts are willing to proceed with the new project. The Districts endorse Senate Bill 1613 which you are now considering. The Districts have tried working with the Tribes and it has worked. While legal differences may exist, those differences were not created by either the Tribes or the Districts. The Districts are optimistic that an opportunity now exists for a good and mutually respectful relationship with the Tribes. Without the project described in Senate Bill 1613 that opportunity will likely be lost forever.

Senator **Conrad**. Thank you very much, Mr. O'Rourke. You have not only met the goal but have exceeded it.

Mr. **O'Rourke**. Hopefully that set a new standard.

Senator **Conrad**. That not only sets a new standard, but it has done wonders for the future of this particular project.

Next we will hear from a panel which will include Mr. Melvin Sampson, the Tribal Council Chairman of the Yakima Indian Nation, will be accompanied by Bob Olney, a Tribal Council Member from the Yakima Indian Nation. We will also be hearing in this panel from the Honorable Pat Berndt, the Mayor of Yakima, Washington, accompanied by Fred Stouder the Assistant City Manager and we'll be hearing from Stuart Trefry, the Project Director of the Yakima Enhancement, Washington State Department of Ecology, Olympia, Washington, who will be accompanied by Charles B. Roe, Jr., Senior Assistant Attorney General of the Washington State Department of Ecology, Olympia, Washington.

I want to welcome all of you and indicate again that we will be operating under the three minute rule. We hope that does not badly inconvenience any of you. Perhaps before we start, Senator Evans, if you would want to make a comment?

Senator **Evans**. I must say that we are dealing with an extraordinarily complex and important piece of legislation and I understand the need to proceed promptly but I would hope that in the case at least of some of the principals who have been involved in this, it may require a little bit more than three minutes to express their views. We are hoping to end up with a piece of legislation that I think would be historic, probably precedent-setting in the country, along with the legislation by Senator Hatfield introduced.

It is not necessary for everyone to read their entire testimony. That is repetitious, but I think that some important points do need to be made.

Senator **Conrad**. We will try to be flexible and accept as a friendly amendment Senator Evans suggestion, and so with that, if we can start with Mr. Melvin Sampson, the Tribal Council Chairman with the Yakima Indian Nation. Welcome.

STATEMENT OF MELVIN SAMPSON, CHAIRMAN, TRIBAL COUNCIL, YAKIMA INDIAN NATION, TOPPENISH, WA, ACCOMPANIED BY BOB OLNEY, TRIBAL COUNCIL MEMBER, YAKIMA INDIAN NATION

Mr. **Sampson**. Thank you, Mr. Chairman. I appreciate the opportunity. I am accompanied by Mr. Robert Olney, a member of the Tribal Council and a member of our irrigation committee, as well as I have legal counsel with me, as well as some technical experts that work for the tribe. We appreciate the opportunity to testify on S. 2322. When you made that ruling, I now know how the lion felt that had the growl kicked out of him.

I was going to try to summarize a summary statement that we prepared and when you further asked me to summarize that summarization and I felt that was impossible, but I will do the best I can.

We make reference specifically, in our prepared statement, which I'd ask be a part of the record, to the content of our treaty of

June 9, 1855, on those rights that go with that particular treaty. I would like to get into some of the elements as it pertains to S. 2322.

The treaty of 1855 and the associated aboriginal rights created the priority dates for these water rights as the paramount rights within the Yakima Basin. The proper date of the appropriation for the Yakima Nation water dates from time immemorial. Even assuming that a time immemorial priority date cannot be established, we feel that the Yakima Nation's treaty priority date of June 9, 1855 predates any other use in the Yakima Basin.

The paramount rights of the Yakima Indian Nation have not been protected, either by the State of Washington, or by the United States Government, in the development of the Yakima Basin. Significant development of lands off the Yakima Indian Reservation has occurred while large acreages of irrigable lands on the reservation have been denied waters and delivery systems for their development.

Further off-reservation development nearly destroyed our aquatic resources, including huge runs of anadromous fish. This has resulted in a denial not only of the water rights of the Yakima Indian Nation, but also the fishery rights, specifically reserved to us under Article III of our treaty.

I brought with me, which you have a copy, some photographs. But, as you review them, you can see very specifically the kinds of instream flow problems that we are experiencing with the Yakima Basin. While the instream flow issue is frequently viewed as an Indian concern, the protection and enhancement of the fishery affects many groups of people utilizing this resource.

Recent testimony on protecting the Hanford Reach placed the commercial value of upriver bright chinook runs at over $20 million. We believe that the Yakima Basin runs of anadramous fish would have an even greater value to the region and will provide benefits as far away as Alaska.

Further studies conducted by us reflect that there are approximately 100,000 acres of land on the Yakima Indian Reservation which are irrigable, but remain undeveloped due to a lack of adequate water supply. We have also viewed the legislative process as a means for providing a physical solution to the water needs in the Yakima Basin. It was never viewed by the Yakima Nation as a vehicle for the resolution of the rights of any party. There is pending in the state court an adjudication to determine these issues.

So, we are here today supporting the continued efforts to formulate legislation which will address the needs of our water users within the nation. We view it as a potential alternative to litigation, but not as an immediate substitute.

We remain optimistic that this legislation may provide the ultimate vehicle for resolution of everyone's needs in the Basin and accordingly we want to see this legislation effort continue.

We have participated in this process to this point as a result of assurances by all parties involved that this process is not one intended to abrogate our rights, but rather a cooperative effort intended to result in a satisfaction of needs. Accordingly, we request that the bill and its legislative history clearly reflects that understanding.

Second, the bill should reflect as a purpose and as a finding that it is specifically intended to protect and promote the cultural and societal well-being of the Yakima Indian Nation, and we support the provisions of the bill providing for that mandatory maintenance of instream flows which will provide improved fishery habitat.

We also are gracious for continuing to work with the appropriate staffs to proceed the advancement of this bill. It is clear that any solution will require these three stipulations. Number one, a revision of a firm non proratable supply of water to currently developed lands with a priority date of 1855, or before or in the event that such a supply cannot be provided for all such lands, provision of sufficient funds to allow the Yakima Nation the option to develop these resources.

No. 2, firm and adequate supplies of water to irrigate significant amounts of increased acreage on the reservation and number three, provision of adequate funds to insure the Yakima Nation's ability to develop, in the future, resources to which we are entitled under our Treaty and for which the Federal Government is unable to provide for under this legislation.

The bill should also clarify that the water rights of the Yakima Indian Nation to on reservation water resources are separate and apart from the provisions of the bill dealing with diversion of off-reservation waters.

The bill also needs to be amended to reflect that all elements under this legislation with the exception of the Wapato Indian Irrigation project improvements and the Roza reregulating reservoir should be portions of the overall Yakima Project.

At the present time in paragraph 5, it provides for the fulfillment of the Yakima Indian Nation water rights. As I previously noted, the Yakima Nation has never viewed the Yakima Basin water enhancement project legislation as a vehicle for extinguishment of any rights of the waters of the Yakima Basin. Further, section 5 should be modified to deal solely with the satisfaction and needs to off-reservation diversions.

The other provisions of that section should be moved to an additional section which will clarify the intent of section 5 to deal solely with the satisfaction of diversion of off-reservation water supply. S. 2322 is——

Senator CONRAD. Mr. Sampson, if I could just intercede. You have gone well beyond three minutes. If you could just inform the chair of how much you have left. It is going to be impossible to complete this hearing if we don't stick fairly closely to the time limits and I apologize for that.

Mr. SAMPSON. I can conclude, if it is your wish. The only thing I'd like to add, aside from the fact that I will remain open to work on any changes on the bill, I would like to add for the record that we appreciated Senator Adams' opening remarks regarding the need for consensus among the Yakima Basin interest on Bumping Lake. I believe that those of us who live and work in the Basin can and have reached consensus on this issue on Bumping Lake, that Bumping Lake must be built.

I note that panel 3 contains only witnesses from outside the Yakima Basin and when you listen to their testimony regarding

Bumping Lake, I think you should remember that this bill is intended to rectify the environmental destruction of the Yakima System, which all of the other parties have had to live with and deal with for the last eight years.

[The prepared statement of Mr. Sampson follows:]

Confederated Tribes and Bands
of the Yakima Indian Nation

Established by the
Treaty of June 9, 1855

TESTIMONY OF THE YAKIMA INDIAN NATION

ON S. 2322

BEFORE THE SENATE ENERGY AND NATURAL RESOURCES

SUBCOMMITTEE ON WATER AND POWER

JUNE 28, 1988

My name is Melvin Sampson. I am the Chairman of the Tribal Council of the Yakima Indian Nation. With me is Mr. Robert Olney, Tribal Council Member and a member of the Tribal Council's Land and Irrigation Committee. I also have legal and technical staff with me should you have questions in their areas of expertise. We welcome the opportunity to testify on this legislation.

The Yakima Indian Reservation was reserved by treaty with the United States on June 9, 1855 (12 Stat. 951) to provide a homeland for the Yakima people. That homeland was intended to provide a basis for the continuation of the Yakima Tribe as a sovereign entity. The Treaty reserved to the Yakimas all rights not granted to the federal government. Included in the reservation was the right to continue the Yakimas as a people and to allow us to retain our culture while at the same time providing the same social and economic opportunities as the non-Indians who moved on to the lands given to the United State. In the Treaty, the Yakimas reserved sufficient waters from all sources to fully develop our homeland, just as our ceded lands have been developed by non-Indians. The Treaty with the Yakima's reflects that these needs are not solely for irrigation and related agricultural and cultural purposes, but also include the development of industry and communities. Unlike many other western Indian tribes who have an irrigation oriented water right, the Yakima Nation further retained a significant right to instream flows for the protection of aquatic life. Closely allied with this most important right are the cultural needs of the Yakima people. Our water allows life to continue. Without it, our spirit, as well as our fish, wildlife, roots, berries and medicines cannot survive.

In the treaty of 1855 the Yakima Nation reserved unto itself sufficient waters to sustain a viable permanent homeland. The Yakima Treaty of 1855, and associated aboriginal rights, create the priority dates for these water rights as the paramount rights in the Yakima basin. The proper date of appropriation for Yakima Nation waters dates from time immemorial. Even assuming that a time immemorial priority date cannot be established, the Yakima Nation's treaty priority date of June 9, 1855 predates any other use in the basin.

The paramount rights of the Yakima Indian Nation have not been protected, either by the State of Washington or the United States government in the development of the Yakima Basin. Significant development of lands off the Yakima Indian Reservation has occurred, while large acreages of irrigable lands on the reservation have been denied waters and delivery systems for their development. Further, off-reservation development nearly destroyed our aquatic resources, including huge runs of anadramous fish. This has resulted in the denial not only of the water rights of the Yakima Indian Nation, but also of the fishery rights specifically reserved to us under Article 3 of our treaty. Access to these fish was a primary reason for the location of the Yakima reservation. I brought with me today photographs taken by our tribal biological staff of conditions at several locations which illustrate the instream flow problems we have been experiencing in the system for many years. These photographs are intended as a graphic demonstration to this Committee of the very real instream flow problems that exist in the Yakima Basin. Without significant improvement of water supplies in the basin, only two options exist: one, continue with the situation shown in the photographs, which is unacceptable to the Yakima Nation and others; or two, force non-Indian irrigators to reduce irrigation diversions, which is unacceptable to the non-Indians.

While the instream flow issue is frequently viewed as an Indian concern, the protection and enhancement of the fishery effects many groups of people utilizing this resource. Recent testimony on protecting the Hanford Reach placed the commercial value of the upriver bright chinook runs at over $20 million. We believe that Yakima Basin runs of anadramous fish would have an even or greater value to the region and will provide benefits as far away as Alaska.

Further, studies conducted by the Yakima Indian Nation reflect that there are approximately one hundred thousand acres of land on the Yakima Indian Reservation which are irrigable but remain undeveloped due to lack of adequate water supply. Under present conditions, supplying adequate water for these lands, without providing additional waters, will require non-Indian irrigators to forego diversions. That is not the wish of the Yakima Indian Nation, but we can no longer have our water rights and needs ignored.

The Yakima Nation has always viewed the legislative process as a means for providing a physical solution to the water needs in the Yakima Basin. It was never viewed by the Yakima Nation as a vehicle for the resolution of the rights of any party. There is pending in state court an adjudication intended to determine those issues. While the Yakima Indian Nation is not a party to that case, it is the purpose of the State of Washington in that action to adjudicate Yakima River water rights. Testimony by the

Yakima Indian Nation on this bill is not intended to reflect any position that it or the United States Government may take in that litigation.

The Yakima Nation is here today supporting the continued efforts to formulate legislation which will address the needs of all water users within the Basin. We view it as a potential alternative to litigation, but not as an immediate substitute. We remain optimistic that this legislation may provide the ultimate vehicle for resolution of everyone's needs in the Basin and accordingly want to see this legislative effort continue.

We appreciate the opportunity to have had significant contact with Senator Evans' staff on the shaping of this legislation. Based on recent discussions it is our understanding and belief that S. 2322 as it stands today, after our opportunity for additional input, will be significantly amended prior to enactment. With that in mind, following are our general comments on the bill.

The Yakima Nation has participated in the process to this point as a result of assurances by all parties involved that this process is not one intended to abrogate our rights, but rather, a cooperative effort intended to result in a satisfaction of needs. Accordingly, we request that the bill and its legislative history clearly reflect that understanding.

Second, the bill should reflect as a purpose and as a finding, that it is specifically intended to protect and promote the cultural and societal well-being of the Yakima Indian Nation. We support the provisions in the bill providing for the mandatory maintenance of specific instream flows, which will provide improved fishery habitat.

We are continuing to work with your staff on issues concerning on-reservation irrigation development, including on-reservation storage and ground water development. Several alternatives for development of presently unirrigated lands and the treatment of currently irrigated lands have been discussed. We have arrived at no firm conclusions. It is clear that any solution will require:

1. The provision of a firm, non-proratable supply of water to currently developed lands with a priority date of 1855 or before, or in the event such a supply cannot be provided for all such lands,

provision of sufficient funds to allow the Yakima Nation the option to develop these resources.

2. Firm and adequate supplies of water to irrigate significant amounts of increased acreage on the reservation.

3. Provision of adequate funds to insure the Yakima Nation's ability to develop, in the future, resources to which we are entitled under our Treaty and for which the Federal government is unable to provide under this legislation.

The bill should also clarify that the water rights of the Yakima Indian Nation to on-reservation water resources are separate and apart from the provisions of the bill dealing with diversion of off-reservation waters.

The bill needs to be amended to reflect that all elements under this legislation, with the exception of the Wapato Indian Irrigation Project improvements and the Roza reregulating reservoir, should be portions of the overall Yakima Project. All Yakima Project waters need to be available to all parties for satisfaction of the various needs specified under the bill.

The bill at the present time in paragraph 5, provides for the "fulfillment of the Yakima Indian Nation water rights." As I previously noted, the Yakima Nation has never viewed the Yakima Basin water enhancement project legislation as a vehicle for extinguishment of any rights to the waters of the Yakima Basin. This title should be amended to reflect that the bill's intent is to satisfy needs, rather than determine absolute rights. The Yakima Nation remains optimistic that a creative physical solution is possible to satisfy present needs in the basin. In the event such solutions becomes reality, all parties must recognize that needs are being satisfied, without singling out any one entity. Further, any stipulation or other recognition of the satisfaction of need must be carefully crafted to reflect that it is operative only in the event that all provisions of this legislation, present and future, are fulfilled in their entirety.

Further section 5 should be modified to deal solely with the satisfaction of needs to off-reservation diversions. The other provisions of that section should be moved to an additional section, which would clarify the intent of section 5 to deal solely with the satisfaction of the diversion of off-reservation water supply. In the event the Yakima Nation should agree that its present needs can be satisfied under the provisions of this bill, it should be noted that the Yakima Nation reserves its claim to off-reservation diversions in the event that additional storage, outside the confines of this bill, is built in the future. Additional waters which may become available as a result of conservation successes over the present 20% and 10% levels should be available to the tribe and others in the valley. These waters should be diverted to the Yakima Indian Nation to irrigate lands which do not receive waters from diversions contemplated under this legislation. This concept is in keeping with the Yakima Nation's understanding that this legislation is intended to fulfill current needs rather than establish absolute rights.

S. 2322 as presently before the Committee, authorizes the construction of the Bumping Lake enlargement and provides for an allocation of the benefits of the project between instream flows and irrigation development. Studies conducted by the Bureau of Reclamation reflect that both additional storage and conservation are necessary if instream flow needs and on-reservation development are to be met. Accordingly, it is not possible to tie conservation needs to the construction of the Bumping Lake project. The Yakima Indian Nation strongly supports the conservation study and the efforts surrounding it, and realizes the benefits to be realized from such a program. It is our belief that sufficient economic benefits and/or sanctions can be provided in other provisions of the bill to insure that conservation measures are implemented.

With regard to the water conservation study, the Yakima Indian Nation supports the bill's provision directing Tribal participation. We request that the bill be amended to reflect that the Yakima Nation, together with the others who will be receiving a formal copy of the study, is recognized on a government-to-government basis. As I noted in the preamble to my statement, water is of the utmost importance to the Yakima Indian Nation and its members, and is inextricably tied to our cultural, religious, and traditional practices. Accordingly, the bill should strongly reflect the cultural importance of the water resource to the Yakima Indian Nation. We would further suggest that the bill include provisions recognizing cultural and religious protection for the Yakima Indian Nation and our resources throughout our ceded area.

Thank you for the opportunity to testify on this legislation. Obviously, we have not provided testimony on specific amendments including the crossing of t's and dotting i's. There is much need for work on specific amendments and language in the bill. Since we will be provided the opportunity to work with staff and other interested parties in the Yakima Basin prior to mark-up, we will provide additional input in that process.

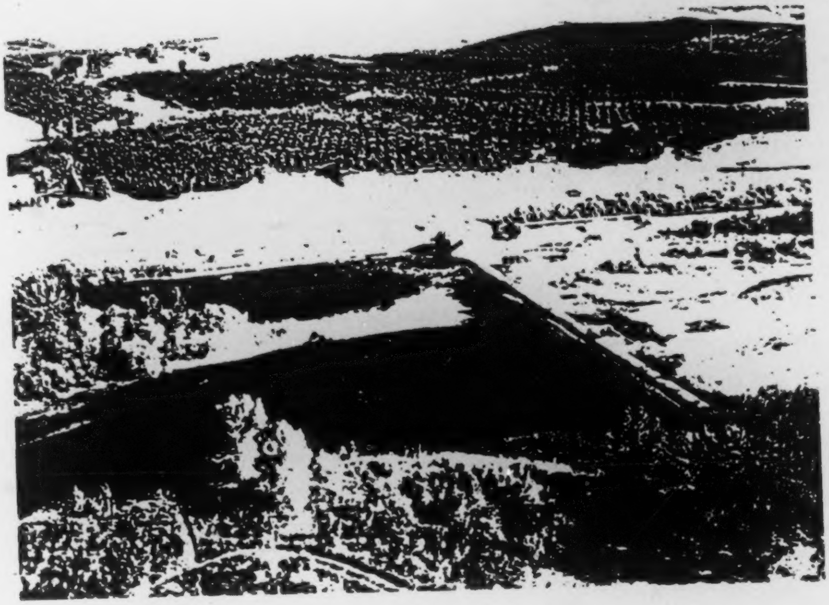

Figure 1.

Sunnyside Dam on the Yakima River - Extreme low flows during fall migration period. (October, 1979)

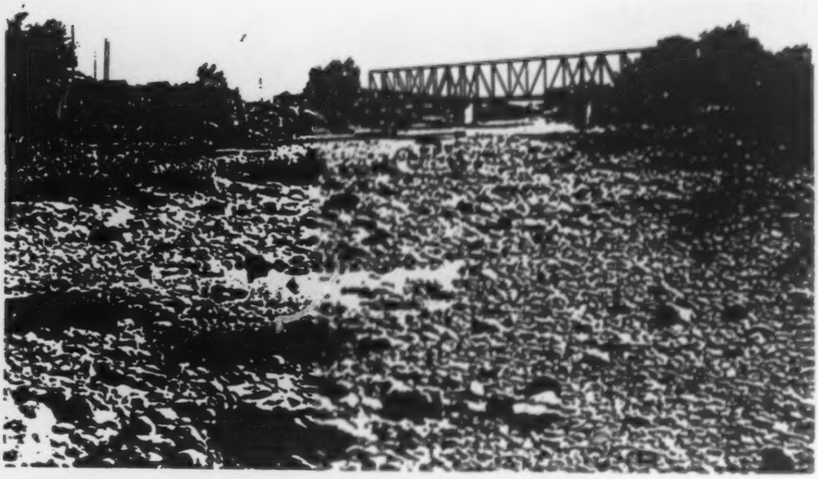

Figure 2.

Yakima River below Sunnyside Dam - Extreme low flows during fall migration period. (October, 1979)

Figure 3.

Fall Chinook Smolts stranded by extreme low flows below Sunnyside Dam. (May, 1986)

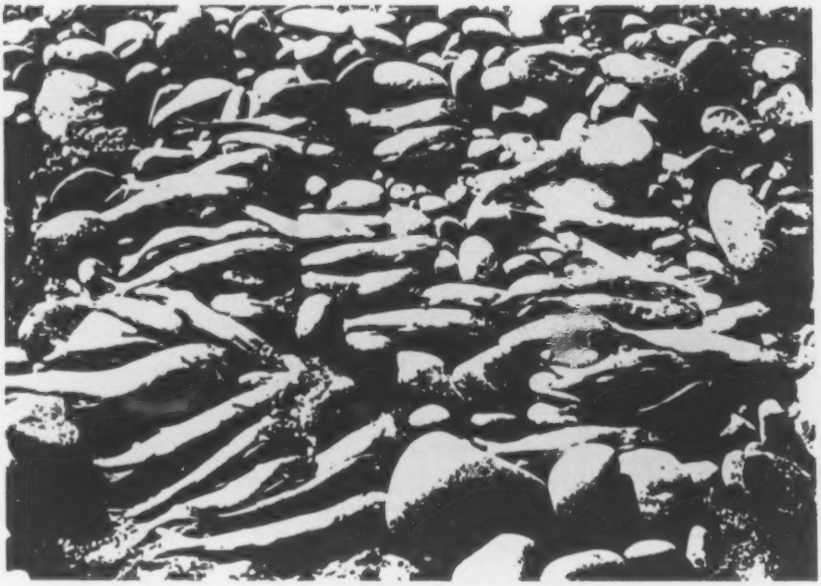

Figure 4.

Fish killed by dewatering below Sunnyside Dam. (October, 1979)

Figure 5.

Prosser Dam on the Yakima River - Extreme low flows during fall migration period. (October, 1979)

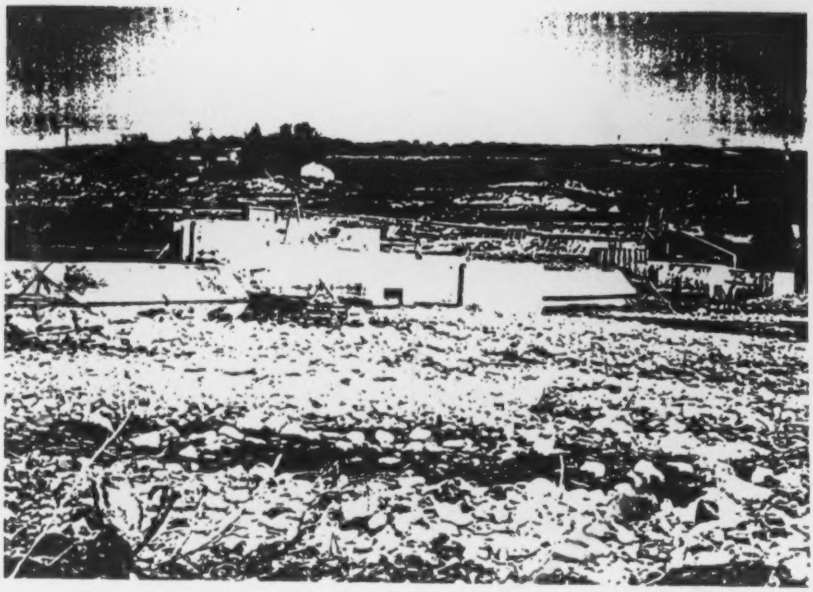

Figure 6.

Yakima River below Sunnyside Dam - Extreme low flows during spring migration period. (May 11, 1986)

Senator CONRAD. Thank you very much. Does Mr. Olney have a statement?

Mr. OLNEY. No, I don't.

Senator CONRAD. Mr. Olney, you are a great man. Next we will hear——

Mr. OLNEY. I just thank you on behalf of our people at home. We're looking forward to having some fish flows for our salmon and we are looking forward to resolving the problems that we have with our neighbors and we look forward to help on your part of it. We hope that it all can be resolved to satisfaction to our rights and satisfaction to the problems that we realize, like our chairman said. So, thank you.

Senator CONRAD. I think you can receive the assurance of this Subcommittee that you will receive a sympathetic hearing and that close attention will be paid to the case that you have made here today. I know that the ways of Congress sometimes are mysterious to people. You come in and work very hard on testimony and then we get into a situation like this one. But action on the Senate floor is so unpredictable that sometimes these things happen.

But, the testimony that you have provided is the basis upon which staff makes recommendations to members and so the work that you've done is not in vain, I can assure you of that. Next we will hear from the Honorable Pat Berndt, the Mayor of Yakima, Washington. Welcome.

STATEMENT OF PAT BERNDT, MAYOR, YAKIMA, WA, ACCOMPANIED BY FRED STOUDER, ASSISTANT CITY MANAGER

Mr. BERNDT. Thank you. I would like to introduce our assistant city manager for the city of Yakima, Rick Stouder. I would like to thank you for this opportunity to testify on Senate bill 2322. The City of Yakima has been an active participant in the off-reservation storage site work group, as part of the Yakima River Basin enhancement project. We support the process that's undergoing here. We encourage the review and the discussion of this bill and endorse the passage of legislation that will meet the interest and needs of all of the citizens in the Yakima River Basin.

The City of Yakima, independent of the Yakima River Basin enhancement program has been completing feasibility studies of potential construction of water storage on Rattlesnake Creek, a tributary of the Natchez and Yakima Rivers. This city was granted the protection of the watershed by an Executive Order from President Warren Harding in 1923, and has held that reservation as potential alternative to meet the future water needs for the Yakima urban area.

Although there is no immediate plan to develop this, we would be concerned as to any reference that would prohibit storage on the Rattlesnake Creek as a future alternative. We do support the process that has been initiated. We feel that additional dialogue will result in legislation and it will meet the needs of all the citizens in the Yakima River Basin and in the Northwest. We thank you for this opportunity to be here today.

Senator CONRAD. Thank you. We very much appreciate your active involvement, taking the time to be here. That's very helpful to the deliberations of the Committee. Does Mr. Stouder have a statement?

Mr. **Stouder**. No, I don't.

Senator **Conrad**. Thank you very much, we appreciate that.

Next we will hear from Mr. Stuart Trefry, the Project Director of Yakima Enhancement, Washington State, Department of Ecology, Olympia, Washington.

STATEMENT OF CHRISTINE O. GREGOIRE, DIRECTOR, WASHINGTON STATE DEPARTMENT OF ECOLOGY, AS PRESENTED BY STUART TREFRY, PROJECT DIRECTOR, ACCOMPANIED BY CHARLES B. ROE, JR., SENIOR ASSISTANT ATTORNEY GENERAL

Mr. **Trefry**. I thank you, Mr. Chairman, Senator Evans. Stu Trefry, Department of Ecology, Project Director for the Yakima Enhancement. Accompanying me is Charles Roe, Senior Assistant Attorney General for the State of Washington, assigned to the Department of Ecology.

Senator **Conrad**. Welcome to Mr. Roe, as well.

Mr. **Trefry**. First, I want to express my gratitude to this committee for conducting the hearing on this legislation and to Senators Evans and Adams for their leadership and Congressman Morrison, as well, in addressing the persistent water shortage issues in the basin. The statement I'm delivering here today is on the behalf of Chris Gregoire, who is the director of the Washington State Department of Ecology. She is unable to be here today, and sends her apologies and the statement I will read portions of is her statement.

The statement is on the behalf of the Department of Ecology, Agriculture, Fisheries and Wildlife. It is significant that these four very different agencies are united in support of the process initiated by the introduction of this important legislation.

As director of the agency which overseas the state's water supply, I'm committed to the effort which the introduction of S. 2322 represents. We in state government are greatly concerned about the effects of these water shortages and are prepared along with people of the Yakima River Basin to move forward now with serious discussions and negotiations leading ultimately to workable compromised solution.

I would like to outline for you now several of the policy and legal issues that must be addressed. The first and foremost is settlement of water right claims. A general adjudication of all claims to surface water rights of the Yakima River Basin is now being processed in the Yakima County Superior Court. One of the primary goals of the proposed of the Yakima Enhancement Project is to provide a foundation for an effective and expeditious quantification for all water right claims of the major water users in the Basin.

It has been a preference of the overriding majority of the water users in the Basin to have these quantifications of water rights' claims achieved in the general adjudication by an agreed upon stipulation rather than through the evidentiary process. The state will continue to push for language which will accomplish this foundation goal. We commend Chairman Sampson and the tribal council of the Yakima Indian Nation for their courage and willingness to at least address this thorny issue. The significant progress we have seen on this legal issue would not have been made were it not for the cooperation of the tribe. We also commend the irrigation community for their activity confronting this issue.

We also are concerned about issues pertaining to consistency with state law that the bill should contain language which is consistent with state law. But, we are cognizant of the fact that some changes may be required due to new proposals in the legislation. We insist upon strong language to address environmental concerns, regardless of what the eventual elements are in the bill, as well as conservation.

We've seen a great deal of progress in the last year from the four working groups and with face to face discussions and three weeks ago the irrigation groups, representatives of the tribes and state agencies got together and talked about an operational scenario which just might work in this legislation and we will have to be diligent in making sure that that can be translated into language for legislation.

Again, the State of Washington is supportive of continuing the discussion process, a process that has already garnered promising results. It is time now to come face to face and government to government to resolve the remaining issues.

I would like to respond to any questions.

[The prepared statement of Ms. Gregoire follows:]

THE STATEMENT OF

CHRISTINE O. GREGOIRE, DIRECTOR
WASHINGTON STATE DEPARTMENT OF ECOLOGY

ON BEHALF OF
DEPARTMENT OF ECOLOGY
DEPARTMENT OF AGRICULTURE
DEPARTMENT OF FISHERIES
DEPARTMENT OF WILDLIFE

TO

SENATE SUBCOMMITTEE ON WATER AND POWER

REGARDING
S.2322 AUTHORIZING
ELEMENTS OF THE YAKIMA RIVER BASIN WATER ENHANCEMENT PROJECT

WASHINGTON, D. C.
JUNE 28, 1988

Good afternoon Mr. Chairman, Senator Evans, and Mr. Brown. I am Christine O. Gregoire, Director of the Washington State Department of Ecology.

First I want to express my gratitude to you, Mr. Chairman, for conducting this hearing and to Senators Evans and Adams, and Congressman Morrison for their leadership in addressing the persistent water shortages in the Yakima River Basin. We are very appreciative of your efforts.

The statement I am delivering here today is on behalf of the Departments of Ecology, Agriculture, Fisheries, and Wildlife. It is significant that these four very different agencies are united in support of the process initiated by the introduction of this important legislation.

It is well known in our state and, in fact, around the nation, of the water supply problems which exist in the Yakima River Basin. The demand placed on the river's valuable resource by agriculture, fisheries and municipal uses is, in many years, greater than the available supply. The drought conditions experienced by our state during the past two water years magnify those problems and make it even more imperative that a comprehensive solution be found.

As Director of the agency which oversees the State's water supply, I am committed to the effort which the introduction of S.2322 represents.

We in state government are greatly concerned about the effects of these water shortages and are prepared, along with the people of the Yakima River Basin, to move forward now with serious discussions and negotiations leading ultimately to workable compromise legislation.

I would like to outline for you several of the major policy and legal issues which must be addressed by this legislation in order for it to receive our full support.

Settlement of water right claims:

A general adjudication of all claims to surface water rights of the Yakima River Basin is now being processed in the Yakima County Superior Court. One of the primary goals of the proposed Yakima Enhancement Project is to provide a foundation for an effective and expeditious quantification of all water right claims of the major water users in the basin. It has been a preference of the overriding majority of water users in the basin to have these quantifications of water right claims achieved in the general adjudication by an agreed-upon stipulation process rather than through the normal evidentiary trial process. The state will continue to push for language which will accomplish this foundation goal.

We commend Chairman Sampson and the Tribal Council of the Yakima Indian Nation for their courage and willingness to address this thorny issue. The significant progress we have seen on this legal issue would not have been made were it not for the cooperation of the Tribe. We also commend the irrigation community for their activity in confronting this issue.

Consistency with State law:

All bills of the nature of S.2322 recognize that federal projects must comply with state water law. S.2322 follows this policy. We commend the sponsors for that approach. It is an essential feature of the bill so far as the state is concerned. In this regard, we are cognizant of the fact that in order for some of the proposals in the legislation to be implemented, changes in state law may be required. As the process continues, we will be diligent in assuring, as best we can, that state law will be in a condition which will allow for the full implementation of the various elements of an agreed-upon bill.

Environmental concerns:

The State of Washington will insist upon strong language to address environmental concerns regardless of the eventual elements that are to be included in this legislation. We feel the bill must authorize sufficient funds for the planning and carrying out of mitigation activities.

Conservation:

The State of Washington is pleased that the Water Use Efficiency Study authorized in the legislation will be patterned after and use results of an existing study recently created by our own State Legislature. The physical and institutional changes which come out of these studies will be useful in accomplishing the goal of providing water in future years.

Mr. Chairman, the events of the past year indicate that a spirit of cooperation has taken shape in the Basin. Four working groups composed of many concerned citizens in and out of the basin sat face-to-face to discuss the future of this project. It seemed to be a consensus that we should move forward with an attempt to write and a pass a comprehensive bill.

Two weeks ago representatives of irrigation and other agricultural interests, environmental groups, state agencies, and the Yakima Indian Nation were invited to participate in a group brainstorming session. The result of those meetings was the operational scenario upon which we are currently basing future drafts of this legislation. The scenario seems workable, however, we need to be diligent in continuing to examine the numbers and how they translate into legislation.

Again, the State of Washington is supportive of continuing the discussion process a process that has already garnered promising results. It is time now to come face-to-face and government-to-government to resolve the remaining issues.

We would be glad to respond to any questions.

Senator CONRAD. Thank you very much, Mr. Trefry.

Does Mr. Roe have any comments that you would like to add?

Mr. ROE. I'd like to be associated with the comments of Mr. Trefry and the written comments of Director Gregoire. I have one statement, one sentence and that is the objective of this legislation is meritorious and that's the message that I would leave in light of your spirit and if I could get the declaration also that I am a great man, I would willingly waive the remainder of my time. I have never had that from a U.S. Senator and I would love to have that characterization.

Senator CONRAD. Well, I'm sending you a letter to that effect.

Senator Evans, do you have questions that you would like to put to this panel?

Senator EVANS. Well, let me start with Chairman Sampson. It's a little hard to get into specifics because we have come a long way since the bill was first introduced and we are working off some different elements now than we were then. It's my understanding and I'd like to know what your understanding is too, that it appears as though we might be coming pretty close. Again, let's for the moment separate, as I tried to earlier, the water supply and where we get it from and the water use and deal first with the water use and distribution.

As I understand it, where we are coming down to now, as far as it explicitly affects the tribe, would be a modified instream flow which I think appears to be a reasonable approach, 55,000 new acres on the reservation for which there would be new and non-proratable water supply, an additional 40,000 or so where there would be the means to augment with some alternatives as to how that might occur and the need to firm up the present proratable Indian-owned lands. Does that encompass pretty much what you're talking about?

Mr. SAMPSON. To this particular point, yes, those are the ratios and the numbers that we had been given and we had been contemplating at this point. And, with those, as a basis of a concept we are ready to proceed further.

Senator EVANS. What I'm going to do, and I will try to build as we go through each set of testimony, is to feel out where everybody thinks we are and how close we are altogether and whether all the pieces then fit, because then we can turn to the question of the necessary ways in which we get the water through storage, efficiency, conservation or a combination of those.

Mr. Trefrey, would the state generally be satisfied in terms of water distribution, do you think the state would probably be satisfied if they saw an agreement between the various irrigation districts and the tribe, as to what ought to happen in the Yakima Valley? Have you got that far? Would the state have any——

Mr. TREFRY. Through a stipulated agreement, yes.

Senator EVANS. You do have an issue that since specific state interests which are expressed in your testimony, which I think we do have to hear. They may not deal directly with water supply in terms of quantity, but certainly the elements that you had mentioned are important for us to deal with.

Mr. TREFRY. Those are mainly bottom line legal issues for the state. And conservation is just a policy thing that the current Administration has adopted as a major policy.

Senator EVANS. What problems do you see or might we get into if we embark on some relatively new ideas—we have talked about them before, in such things as water banking, that sort of thing? What pitfalls do you see in the necessary changes that might be required at the state level in law to allow some of those things to happen, even if they were couched in Federal law as being purely a voluntary element, something for us to try and a way to gain access to more water.

First, do you think changes in state law would be required to allow that to happen and if so, are those going to be tough to come by?

Mr. ROE. I think that the two areas in the biggest picture can be characterized as saved water and transferability issues and in that regard we have examined that very closely, Senator Evans. And, depending on which types of water rights you're dealing with within the Yakima system, it may be that we would have to look to changes in state law and one of the statements of Director Gregoire is that we would be committed to attempt this in all reasonable ways that we could to achieve those types of modifications within the legislature and I think we could.

Senator EVANS. Would you guess that the biggest problem is in insuring that the biggest problem may be, and it may not be as big a problem, legally, as it is in making sure people are comfortable with the end result.

But, if someone in any kind of voluntary water banking or water savings proposition doesn't, in temporarily giving up water lose any bit of that person's water right?

Mr. ROE. Without question, if that type of an approach were developed at the Federal level and there is any thought that someone might lose by forfeiture concept, I'm sure that, at least in my own mind the legislature would enact legislation to assure that that type of forfeiture would not take place.

Senator EVANS. Would it be important, in your view, if we get into something like this to make certain that in any Federal Act itself there is a clear statement of nonforfeiture, and clear it up at the Federal level?

Mr. ROE. Yes. The answer is yes.

Mr. TREFRY. Senator Evans, I've had an opportunity to brief some key members of the state legislature and they have been right up to speed as to what the possible proposals are for this legislation, as well as possible financial impacts, so the state legislature, is if not fully up to speed, at least almost there.

Senator EVANS. Good. I don't think I have anymore questions at this point, Mr. Chairman. I may well have some more questions for the record or perhaps more accurately I understand that this group is getting together while still back here in Washington, D.C., and will continue to work toward what I think we're reasonably close to achieving.

Mr. TREFRY. We would at least like to thank you for providing a great deal of your staff time devoted to this. It's been very helpful.

Senator EVANS. I never like to leave the ball at half time.

Senator CONRAD. Thank you very much. I appreciate both your patience and your contribution here today. Next we will hear from a panel that will include Mr. Paul Chasco, Secretary/Manager of the Kennewick Irrigation District, John Pringle, President of the Board of Directors of the Kennewick Irrigation District, Burton Eller, the Vice President of Governmental Affairs for the National Cattlemen's Association, and Jeff Dunning, Manager of the Ellensburg Water Company.

I understand there will be a substitute for Mr. Chasco.

Mr. EBERHART. Mr. Chairman, I'm the substitute. My name is Urban Eberhart.

Senator CONRAD. Could you give me that again, please?

Mr. EBERHART. Urban Eberhart.

Senator CONRAD. We seem to be missing Mr. Pringle. He is not with us?

Mr. EBERHART. No.

Senator CONRAD. All right. Mr. Eberhart, if you identified yourself for the record and proceed with the summary of the testimony that you wanted to develop and then as always, we will take your full written statement for the record.

STATEMENT OF URBAN B. EBERHART, DIRECTOR, KITTITAS RECLAMATION DISTRICT

Mr. EBERHART. Thank you very much, Mr. Chairman. Thank you for the opportunity to testify on S. 2322 to authorize certain elements of the Yakima River Basin water enhancement project. My name is Urban Eberhart. I'm a farmer in the Kittitas Valley, which is located in the upper portion of the Yakima River Basin.

Senator CONRAD. You are a farmer?

Mr. EBERHART. Yes, I am.

Senator CONRAD. I thought you looked honest.

Mr. EBERHART. Thank you.

Senator CONRAD. We have a lot of farmers in my home state, come on.

Mr. EBERHART. It's nice to find someone with some sympathy. I'm also Director on the Kittitas Reclamation District, a proratable irrigation district fighting irrigation of water to approximately 60,000 acres of land in Central Washington State.

I'm speaking on behalf of both the major proratable irrigation districts and the Yakima River Basin, which includes the Roza Irrigation District, as well as the Kittitas Reclamation District. We are in favor of a final settlement of the Yakima Indian Nation water right claims, as well as a settlement of all other major claimants in the Yakima River Basin.

We would also like to see a reduction in the severity and frequency of water shortages that affect irrigation and other water associated resources of the Yakima River Basin. For 40 years it has been recognized that enlargement of Bumping Lake is necessary and extensive studies have been conducted on the feasibility and numerous alternative plans.

It is now clear that the only way to meet the needs of the various parties and accomplish all of the objectives of the enhancement project, is through the construction of the enlargement. Mindful of the environmental impact of the enlargement, this proposal contains provisions to mitigate adverse environmental impacts from the construction of Bumping Lake. All users in the Basin recommend the importance of water use efficiency.

The Yakima River Basin has experienced many water short years in the past. Even with the risk of marginal farm economy, landowners have implemented conservation improvements on their farms. These improvements in the Kittitas Valley alone total about $60 million. The farmers under the Roza Irrigation District have also implemented substantial improvements. A portion of the cost of these improvements have been covered by existing ASES programs with the remaining costs being covered by the farmers.

However, there is not enough funding in the ASES programs to accomplish all of the improvements necessary in the Yakima River Basin to bring all of the systems into state-of-the-art condition. We remain committed to doing all we can to implement water efficiency measures.

When S. 2322 was introduced in April by Senator Evans, he stated that all of the parties involved may not embrace this bill in its entirety. He also said that this legislation is intended to initiate serious discussion and negotiations for a workable compromise package. Over the course of the last two months, all interested parties had been working on discussion drafts of this bill. The Basin interests have been trying to achieve an acceptable solution to the issues involved. We appreciate the Subcommittee providing us with this opportunity to advance this process. I am encouraged that this process will allow us to reach an agreement that will satisfy the requirements of all interested parties. Thank you.

[The prepared statement of Mr. Eberhart follows:]

Testimony by

Urban B. Eberhart
Director, Kittitas Reclamation District

Before the Energy and Natural Resources
Subcommittee on Water and Power

June 28, 1988

Mr. Chairman,

Thank you for the opportunity to testify on S. 2322, to authorize certain elements of the Yakima River Basin Water Enhancement Project, and for other purposes.

My name is Urban Eberhart. I am a farmer in the Kittitas Valley, which is located in the upper portion of the Yakima River Basin. I am also a Director on the Kittitas Reclamation District, a proratable irrigation district providing irrigation water to approximately 60,000 acres of land in Central Washington State.

I am speaking on behalf of both the major proratable irrigation districts in the Yakima River Basin, which includes the Roza Irrigation District as well as the Kittitas Reclamation District.

We are in favor of a final settlement of the Yakima Indian Nation water right claims as well as a settlement of all other major claimants in the Yakima River Basin.

We would also like to see a reduction in the severity and frequency of water shortages that effect irrigation and other water-associated resources of the Yakima River Basin.

For 40 years, it has been recognized that enlargement of Bumping Lake is necessary, and extensive studies have been conducted on the feasibility of numerous alternative plans. It is now clear that the only way to meet the needs of the various parties and accomplish all of the objectives of the enhancement project is through the construction of the enlargement. Mindfull of the environmental impact of the enlargement, this proposal contains provisions to mitigate adverse environmental impacts from the construction of Bumping Lake.

All users in the basin recognize the importance of water use efficiency. The Yakima River Basin has experienced many water short years in the past. Even with the risk of a marginal farm economy, landowners have implemented conservation improvements on their farms. These improvements in the Kittitas Valley alone total about $60 million. The farmers under the Roza Irrigation District have also implemented substantial improvements. A portion of the cost of these improvements has been covered by existing ASCS programs, with the remaining costs being covered by the farmers. However, there is not enough funding in the ASCS program to accomplish all of the improvement necessary in the Yakima River Basin to bring all of the systems into state-of-the-art condition. We remain committed to doing all we can to implement water use efficiency measures.

When S. 2322 was introduced in April by Senator Evans, he stated that all of the parties involved may not embrace this bill in its entirety. He also said that this legislation is intended to initiate serious discussion and negotiations for a workable compromise package. Over the course of the last two months, all interested parties have been working on discussion drafts of this bill. The basin interests have been trying to achieve an acceptable solution to the issues involved. We appreciate the Subcommittee providing us with this opportunity to advance this process.

I am encouraged that this process will allow us to reach an agreement that will satisfy the requirements of all interested parties.

Senator **Conrad**. Thank you very much, Mr. Eberhart. We appreciate your being here today. Next you'll hear from Mr. Burton Eller, the Vice President of Governmental Affairs, National Cattlemen's Association.

STATEMENT OF J. BURTON ELLER, JR., VICE PRESIDENT, GOVERNMENTAL AFFAIRS, NATIONAL CATTLEMEN'S ASSOCIATION

Mr. **Eller**. I'm here on the behalf of the National Cattlemen's Association, but also the Washington State Cattlemen's Association. We understand the bill as filed was done so with the intention that substantial changes in its language be made. We also are advised that discussions redrafts will be made available to our people in the country.

Traditional individual water rights are fully private property rights and so recognized and protected by the Constitution, the states, the Congress, and the courts. It is of paramount importance that all of these individual rights be fully recognized and protected.

We support the efforts of the Subcommittee and the Congress to give certainty to its previous actions, whether it be the 1877 Desert Land Act with its water and land patents, the recognition of its territorial governments, and the enabling acts of statehood, or the Bureau of Reclamation contracts with water users. We look forward to language in this bill that will accomplish this right certainty.

In arid and semi-arid sections of our country, the application of water to the land is what made settlement and economic development possible. In some areas of the West, both private and governmental irrigation development and expeditious use of water is at this very time avoiding the drought disaster that is occurring in the traditional farm belt, an issue which the Senator from North Dakota knows about first-hand right now.

One of the most vehement discussions in water short areas concerns water banking. Whatever may be proposed, the first necessity is certainty of the water right entitlement before banking or other uses can even be discussed at all. The responsibility of meeting treaty claims is a Federal responsibility and we will support language in subsequent drafts of S. 2322 that will fully recognize this responsibility.

However, the Federal Government cannot use the private resources of individual citizens to meet those Federal obligations. We have previously presented testimony at several hearings on the Yakima enhancement legislation. These are included for the record today, and with that, Mr. Chairman, I appreciate the opportunity to testify and give you back some time.

[The prepared statement of Mr. Eller follows:]

NCA
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TESTIMONY

before the

United States Senate
Committee on Energy & Natural Resources
Subcommittee on Water & Power

regarding

Yakima River Basin Water Enhancement Project

S. 2322

by

J. Burton Eller, Jr., Vice President
Government Affairs & Policy Coordination
NATIONAL CATTLEMEN'S ASSOCIATION

June 28, 1988

The National Cattlemen's Association is the national spokesman for all segments of the beef cattle industry--including cattle breeders, producers and feeders. The NCA represents approximately 230,000 cattlemen. Membership includes individual members as well as 49 affiliated state cattle associations and 23 national breed associations.

Thank you for this opportunity to testify about S. 2322, Yakima River Basin Water Enhancement Project Authorization. I am here testifying on behalf of the National Cattlemen's Association and also the Washington State Cattlemen's Association.

We understand that this bill was filed with the intention that substantial changes in its language would be made. We are also advised that discussion redrafts are being provided to our people in the country. In consequence, our comments here today will necessarily be of a general nature.

The NCA holds that existing individual water rights must be preserved in all circumstances. Traditional individual water rights are fully private property rights and so recognized and protected by the Constitution. Our cattlemen members possess water rights of many kinds in many geographical circumstances. It is of paramount importance that all of these individual rights be fully recognized, protected, and given certainty. We support the efforts of this subcommittee and the Congress to give certainty to its previous actions whether it means the 1877 Desert Land Act with its water and land patents, the recognition of its Territorial Governments, Enabling Acts of Statehood, or Bureau of Reclamation contracts with water users. We look forward to language in this bill that will accomplish this.

Water rights are a property right and so recognized by states, Congress, and the courts. In arid and semi-arid sections of our country, the application of water to the land is what made possible settlement and economic development. In some areas of the West both private and governmental irrigation development and expeditious use of water is, at this very time, avoiding the drought disaster occurring in the farm belt.

The availability of agricultural water, as we are sure you are aware, has fortunately limited the federal assistance required in adverse circumstances. However, the water must be available without legal threats or arbitrary diversions to other uses.

One of the most vehement discussions in water short areas concerns water "banking." There are as many proposals about how to do this as there are definitions of what "banking" really means. Whatever may be proposed, the first necessity is certainty of the water right entitlement before "banking" or other uses can be discussed at all. If this bill will provide absolute certainty of existing water rights to users, this subcommittee will have taken a great and necessary step in future water relationships in much of the United States.

Of equal importance is the pontification of Indian claims and their settlement. The responsibility of meeting Treaty claims is a Federal responsibility and we would support language in subsequent drafts of S. 2322 that will recognize this responsibility. However, the Federal government cannot use the private resources of individual citizens to meet federal obligations. Any Federal settlement of Indian claims for off-reservation water use must not, in anyway, restrict or interfere with existing, privately owned and state adjudicated water rights. Any new water allocated, including instream flows must derive from non-previously allocated sources.

Our National Cattlemen's Association policy provides that "agreements involving individual private land and water rights shall be solely a decision of individual private property owners." We urge that language be incorporated in this bill to ensure that individuals rights are protected, that contracts are not abrogated, that future agreements are between only willing persons and any agency, that any measures for increased efficiency or conservation are funded by government appropriation up front, that all entitlements of water are legally and physically served, and that no land or water uses are impacted including future management options.

We also support the continued sovereignty of the states in water rights allocation. We have some concern that the present language in S. 2322 is deficient in this regard and further confuses the issues in the Northwest states by references to "Northwest Power Planning Council." We hope these problems are corrected in the next draft.

We have previously presented testimony at several hearings on Yakima Enhancement legislation; these are included for the record today. We appreciate this opportunity to testify and look forward to discussions concerning further language. We will be happy to provide you with specific written comments following the review of the redraft by our members in the West, but we strongly oppose any movement of this Bill until the problems to which this testimony refers are resolved in Committee.

Senator CONRAD. Mr. Eller, you have done a very very good job here. I appreciate your brevity. Next we will hear from Jeff Dunning, the manager of the Ellensburg Water Company.

Mr. Dunning.

STATEMENT OF JEFF DUNNING, SUPERINTENDENT, ELLENSBURG WATER CO., KITTITAS COUNTY, WA

Mr. DUNNING. Thank you, Mr. Chairman. My name is Jeff Dunning and I am superintendent of the Ellensburg Water Company. The Ellensburg Water Company has delivered water to approximately 11,000 acres in Kittitas County, Washington, since 1885.

This statement is made on behalf of the water company and other irrigation companies and districts all of which were organized and began delivery of water before adoption of the Federal Reclamation Act of 1902.

At a meeting in Yakima on June 23rd, held to discuss a study draft of S. 2322 representatives of various entities interested in the waters of the Yakima River Basin were told that it was the desire to achieve two goals at that meeting. These were agreement to the basic concept of the bill and a pledge by the various entities to continue working together for a solution to the problems addressed by the bill.

The Ellensburg Water Company and these other entities strongly desire to continue working with other Basin entities to solve Basin-wide water supply distribution problems. At the same time we must point out some serious problems we perceive developing with what today appears to be the basic concept.

As drafted, the bill recognizes the additional treaty water rights for the Yakima Indian Nation beyond those previously quantified by the Secretary of the Interior and Congress. In so doing, the bill undermines the legal basis of the Yakima project and the economy of the Yakima Basin. Quantification of tribal and other water rights claims was the basis upon which the Yakima project was established. Quantification of tribal water rights has been in effect ratified by Congress on at least two occasions since 1905.

Quantification of the claims of non-Indian water users was accomplished by limiting agreements entered into by entities representing those individual water users who were then using approximately 90 percent of the low water flow of the Yakima River System. Those agreements made the Yakima Project feasible.

In 1905 when the United States had the Yakima Project under consideration, the Secretary of the Interior refused to approve the Project or begin construction until all conflicting claims of those appropriating water from the Yakima River had been adjusted. All suits pending to prevent diversion of water from the Yakima River for the Yakima Indian Reservation were determined and any and all other litigation that in any way tended to embarrass or restrict the appropriation of water from the Yakima River or any other body of water for irrigation of land under the Yakima Project were also determined.

Quantification of the Indian Water Rights, circa 1905 by the Secretary of the Interior at 147 cubic feet per second led to years of controversy, which was finally resolved by Congress in Section 22 of the Indian Appropriation Act of August 1, 1914. In that Act, Congress after extensive investigation, hearings and debate provided the reservation with an additional 573 cubic feet of water from the Yakima Project storage. The important language of the Act was that which directed the Secretary of the Interior to furnish in perpetuity enough water in addition to the 147 second feet of water so that there would be at least 720 feet of water available for irrigation during low water irrigation season.

The Act goes on to say this allocation of water was to be considered as equivalent and in satisfaction of the rights of the Indians in the low water flow of the Yakima River. By 1940 it had become clear that the 720 second feet provided by that Act with the full control of the river provided by the Yakima Project became a maximum as well as a minimum.

Senator CONRAD. Mr. Dunning, if I might, let me just indicate our situation. A vote, a 15 minute roll call vote has just been called and I am wondering if you could wrap up in about a minute and then we will—Senator Evans and I will go to the floor and vote at 5:30. I have a meeting on the drought which I simply have to go to. It was supposed to have been done at 4:30 here. Obviously, that did not happen.

Senator Evans, are you able to come back?

Senator EVANS. Yes. In fact, if we can complete, I think before we have to go to this. As I understand there are three roll call votes back to back and so it may take a little more time. I think——

Senator CONRAD. I am told they have rolled these into one and so perhaps we could get back very quickly and proceed to the next panel. So, Mr. Dunning, if you could summarize the rest, we would then proceed to the next panel upon our return.

Mr. DUNNING. I think, in summary, I'd just like to point out that the irrigators before the project was built, thought that if they thought that they were settling into what they believed were assured rights, and so far Congress has stood by the commitment from those times. We would like to continue working in the process that we feel that what we have entered and written comment for the record, deserves very careful consideration by the Subcommittee. We would like to continue working toward final language for S. 2322 and bring it to your subcommittee in the near future.

[The prepared statement of Mr. Dunning follows:]

Jeff Dunning, Ellensburg Water Company
S. 2322
To the Water and Power Subcommittee
June 28, 1988

To: Senator Bill Bradley
Chairman
Subcommittee on Water and Power Resources

Mr. Chairman:

My name is Jeff Dunning. I am Superintendant of the Ellensburg Water Company. The Ellensburg Water Company has delivered water to approximately 11,000 acres in Kittitas County, Washington since 1885.

This statement is made on behalf of the Ellensburg Water Company and other irrigation companies and districts all of which were organized and began delivery of water before adoption of the Federal Reclamation Act in 1902. Due to the time of year and because of crop conditions and harvests these entities could not be separately represented here today. Water use is not the only arena in which Yakima River Basin irrigators are forced to be frugal. It is my understanding that written statements will be furnished by these entities in the next few days.

At a meeting in Yakima, Thursday June 23, held to discuss a June 22 study draft of S. 2322, Mr. Mentor told representatives of various entities interested in the waters of the Yakima River Basin that he wanted to achieve two goals at that meeting. These were:

1. Agreement to the basic concept of the bill; and
2. A pledge by the various entities to continue working together toward a solution of the problems addressed by the bill.

The Ellensburg Water Company and these other entities strongly desire to continue working with other basin entities to solve basin-wide water supply and distribution problems. At the same time we must point out some serious problems developing with what today appears to be the basic concept.

As drafted the bill recognizes additional treaty water rights for the Yakima Indian Nation beyond those previously quantified by the

Secretary of the Interior and Congress. In so doing the bill undermines the legal basis for the Yakima Project and the economy of the Yakima River Basin. It also undermines the position of non-Indian water users in the Yakima River Basin General adjudication which is now pending before the Superior Court for Yakima County, Washington.

Quantification of Tribal and other water rights claims was the basis upon which the Yakima Project was established. Quantification of Tribal water rights has been in effect ratified by Congress on at least two occasions since 1905. Quantification of the claims of non-Indian water users was accomplished by limiting agreements entered into by entities representing those individual water users who were then using approximately 90% of the low water flow of the Yakima River system. Those agreements made the Yakima Project feasible.

In 1905 when the U.S. had the Yakima Project under consideration, the Secretary of the Interior refused to approve the project or begin construction until

(1) all conflicting claims of those appropriating water from the Yakima River had been adjusted,

(2) all suits pending to prevent diversion of water from the Yakima River for the Yakima Indian Reservation were determined, and

(3) any and all other litigation that in any way tended to embarrass or restrict the appropriation of water from the river or any other body of water for irrigation of land under the Yakima Project were also determined.

Thus, the United States and various entities entered into the Limiting Agreements and the Secretary quantified the water right of the reservation to 147 cubic feet per second of the flow of the Yakima River.

The quantification of the Indian water right by the Secretary of the Interior at 147 c.f.s. led to years of controversy which was finally resolved by Congress in Section 22 of the Indian Appropriation Act of August 1, 1914 (see 38 Statutes at Large, page 604). In that Act Congress, after extensive investigation, hearings and debate, provided the reservation with an additional 573 cfs of water from Yakima Project storage. The important language of the Act was that which directed the Secretary of the Interior to furnish in perpetuity enough water "in addition to the 147 second feet of water heretofore allotted to said Indians" so that there would be at least 720 cfs of water available for irrigation during the low water irrigation season. The Act goes on to say that this allocation of water was to be

> ". . . considered as equivalent to and in satisfaction of the rights of the Indians in the low water flow of the Yakima River . . . . ."

At the time Congress
(1) recognized that the Tribe had a treaty fishing right,
(2) declared that the primary purpose of the Treaty was to establish the Indians on the reservation as an agrarian people,
(3) knew that it was dealing with the entire water resources of the Yakima River basin,
(4) knew of the Winters Doctrine (which had been established by the U.S. Supreme Court in 1908),
(5) did not repudiate but ratified the earlier quantification of Tribal water rights by the Secretary of the Interior, and
(6) consciously decided to leave the existing non-Indian water rights (as previously limited by agreement with the United States) intact.

By 1940 it had become clear that the 720 cfs provided by the 1914 Act had , with the full control of the river by the Yakima Project, become a maximum as well as a minimum. Additional waters were needed. So in the Act of July 1,1940 Congress again reviewed and acted upon the water rights of the Tribe in the Yakima River. It appropriated funds to provided 100,000 acre feet of water to supplement the 720 second feet. In doing this Congress ratified and approved the 1914 Act.

The limiting agreement contracts obtained by the Secretary of the Interior from non-Indian water users in 1905, 1906 and later were all given in consideration of the indirect benefits anticipated to come from the Yakima Project as proposed by the Department of Interior.

Those benefits included the stable water rights in the basin which had been required by the Secretary of the Interior as a condition for the project. Water users who today are still affected by those limiting agreement contracts have a continuing claim on the United States that the stability of their water rights will be preserved. So far Congress has stood by this committment.

The water rights for irrigation in the Yakima River Basin are held by the individual water users, not the irrigation districts or water companies. The districts and companies are governed by boards of directors who have a fiduciary obligation to the water users not only to deliver water but to do nothing to impair or compromise their water rights without consideration. It is not reasonable to expect these governing boards to support S. 2322 until they can be sure that they are not violating their duty to the water users.

The existence and recognition of the priority of non-Indian water rights as established by the Secretary of the Interior in Congress in 1906, 1914 and 1940 have not been adequately dealt with in any version of S. 2322. The haste with which this very complex legislation is being handled creates too much uncertainty as to its impact on vested, non-Indian water rights and the economy of the Yakima River Basin.

Representatives of the Ellensburg water Company and other entities who are not separately represented here today have testified at field hearings held in reference to the Yakima Enhancement legislation during the past two years. That testimony reflects the continued effort by all to achieve a satisfactory solution to our mutual difficulties. We would like to continue working toward final language for S. 2322 and bring it to your subcommittee in the near future.

Thank you for your attention.

Senator CONRAD. Thank you very much, Mr. Dunning. Senator Evans, do you have questions?

Senator EVANS. I just have a few questions which I think we can handle before we have to go, so that the panel doesn't have to sit here and wait. Let me ask Mr. Eberhart first.

Are you aware in reasonable detail as to the most current status of the proposals, negotiations, that are now current?

Mr. EBERHART. I'm aware of one of last Thursday that I have not seen——

Senator EVANS. Well, that's about as late as anything. How does, knowing what you know of that and just dealing with the water distribution side and not the supply side at the moment, does that appear to come close to handling your needs, which would be, as I understand it, the supply of pre-Quakenbush waters, the cost associated with fisheries not borne by the irrigators, that this would get you to a point where, and if it looked like the tribal needs were met, that this would lead to squashing of claims of junior districts against senior districts?

Mr. EBERHART. I certainly think we are getting closer to that and that makes it more of a saleable item. There are a few changes that still need to be made, but it is headed in the right direction, that's correct.

Senator EVANS. That's really what I'm trying to find. It appears to me, from what I hear, and from listening to each of the witnesses, that at least on the supply side, I mean the distribution side, we are reasonably close and I think there are still items out there in a complex piece of legislation that have to be dealt with. Then we will have to deal somewhat separately, but I think just as importantly, if we can get issues aside to a point that we know what we're dealing with, I think the chance of getting a responsible supply side solution is pretty good.

Just a comment for both Mr. Eller and officially to Mr. Dunning. The listening of history, which is interesting and I know appears to most people to be kind of confusing because it appeared at about three times in past history that Congress had settled claims and that they had appeared to be final settlements, but we all ought to recognize that in our system the courts ultimately make a decision as to whether what Congress does is Constitutional or not.

And, I think the reason we're all here is because there's been a very serious question raised by the Quakenbush decision and the subsequent events that maybe what Congress did was not Constitutional, but what they were advancing in terms of water rights left out those who had water rights that preceded anyone elses, the Indian tribe, and that's what's brought us to this, first to the controversy and now hopefully to a resolution that will serve everyone's interests.

And, I think that it would be dangerous indeed if any one felt that the laws of Congress, as passed in 1940 and 1914 and 1904 or however long ago necessarily in 1988 are going to withstand a court challenge. And, what we want to do is avoid having a court challenge by getting assured water supplies to everyone who requires them.

Mr. Eller, you have mentioned water banking. I know that it is a term that, I guess it's not as explicitly defined, maybe because we are still searching for the right ways to approach this, but let me describe it to you in this way and see what you think.

If you start with the stipulation that any water banking done by a person holding a water right is done voluntarily and done with no loss to his permanent water right, but that in exchange for, for instance, a payment every year, that in return that water right holder might say, in a certain year, a low water year, I will agree to give up a certain share of the water of my right for that limited period of time and I have done it in exchange for this payment on a yearly basis.

How does that fit, as a possibility?

Mr. **Eller**. Mr. Evans, I can't answer that entirely, because I'm only familiar with some California cases, but it seemed to be getting closer. If the individual could, indeed, annually make his own decision, based on his own sets of circumstances, then it perhaps would fit some of the parameters we are looking at.

Senator **Evans**. Well, he would not make a decision every year. It would be somebody who was willing to do it, willing to enter into a contract, saying that on an extended basis I am willing for a payment every year, that in those rare years where there is a real shortage, I'm willing to give up one acre foot or some share of that water right for the needs of others, I will do it in response to that payment without giving up permanent water rights.

Mr. **Eller**. He has sold that over the length of the contract and as long as that doesn't attach to the future owners property rights, I presume it would stand.

It is not a sale position.

Senator **Evans**. And, I don't think there's any intent that anyone would want to do that. Just as a general question, understanding it on that basis, isn't the remaining question how much? You know, if the price is high enough I suppose the guy would quit farming and would just sell water, and at some price is low enough so that they say, heck no, I can use my water better farming, then at some place in between there may be some who say, yes, I think that's a good deal for a certain share of the water. That is my idea.

Mr. **Eller**. And, as I hear you, you are saying that you have the certainty and the preservation of that individual water right in that process?

Senator **Evans**. Yes. So, the question then becomes whether it is practical in terms of getting availability of water in low water years, but at a cheaper rate. In other words, what you have to pay is cheaper than whatever else, whatever other alternatives there is for gaining that much water.

Mr. **Dunning**. Senator, relating to this historical thing, I think that's what I'm trying to get at. I know that perhaps those things left things unclear, but I hate to see that happen in the future too.

Senator **Evans**. Amen. That is what I hope and that's why we are working so hard on this. I think the only way we will get legislation that really appears to work is legislation that will meet the water needs of all the parties, at least in a sufficiency so that there is agreement and once we get to that point, then I think we can lay to rest some of the potential new ideas that come along. Thank you very much.

I will recess for about ten minutes and then I will be back. And the next panel might come up and be ready. I will be back as soon as I can.

[Recess.]

Senator **Evans** [presiding]. The meeting will come back to order. Thank you for your patience with this. I feel like a marathon man going back and forth for all of these votes. We welcome Loren Strain, Citizens for Responsible Water Projects, David Conrad, Friends of the Earth, Brock Evans of the National Audubon Society, and Richard Rutz of the Mountaineers of Seattle.

We'll start with Mr. Strain.

STATEMENT OF LOREN STRAIN, CITIZENS FOR RESPONSIBLE WATER PROJECTS, INC.

Mr. **Strain**. Thank you, Senator Evans. Our organization supports efforts to improve the distribution and useful application of water in the Yakima River Basin through water conservation measures. We also support the concept of additional water storage, but not at the Bumping Lake enlargement site. We question the advisability of trying to place new acreage under irrigation when available water supplies can scarcely accommodate presently irrigated acreage.

We support the development of the Wymer storage site as an alternative to Bumping Lake enlargement. Wymer is a relatively low elevation off river storage site, located in a desert area along the main stem of the Yakima River. We believe that the storage near the point of application is important because it can prevent wasteful release of excessive flows resulting from efforts to anticipate water requirements days in advance. Advance release is required because of travel time in the river from reservoirs over 100 miles away.

The points of comparison of Wymer to Bumping Lake enlargement, are as follows. Ability to fill. I think that the Wymer site has the better possibility for reliable filling, because it is a pump storage project which would allow it to be filled partially at any time that there were excess flows.

It also has had a low elevation which would pick up some water from the precipitation at low elevations. The Bumping site on the other hand is so high in the mountains that it gets none of this low elevation runoff.

The area above the Bumping site represents only six percent of the runoff of the total basin. We think that this is too small a quantity when there are other places available which could do much better. Also, there are some geologic problems with the Bumping. It sits, or the site will sit on an alluveal till that is up to 250 feet deep. It is therefore impractical to try to place the dam on bedrock.

By comparison, the Wymer site has between three and 20 feet of till and so it is entirely possible to sit it on bedrock.

While we regard seepage as something of a problem, it is not our main concern through this sand and gravel below the dam site. What concerns us greatly is that this sand and silt would be in a saturated condition under considerable pressure because of the deep water above the dam. This could set up the makings of a situation for liquefaction. It could be extremely dangerous to down river people. I see my red light is on. Thank you.

[The prepared statement of Mr. Strain follows:]

CITIZENS FOR RESPONSIBLE WATER PROJECTS, INCORPORATED

President: Loren Strain, Seattle, WA
Vice President: Rolland Evans, Tacoma, WA
Secretary-Treasurer: O.F. Martin, Yakima, WA
Board Member: Kay Kershaw, Goose Prairie, WA
Board Member: Laura Lane, Philadelphia, PA

3732 N.E. 193rd Street
Seattle, Washington 98155
June 28, 1988

Mr. Chairman and members of the Subcommittee, I am Loren Strain, president of Citizens for Responsible Water Projects, Inc. I appreciate this opportunity to present the position of our organization regarding S2322.

Our organization supports efforts to improve the distribution and useful application of water in the Yakima River Basin through conservation measures. We also support the concept of additional water storage but *not* at the Bumping Lake Enlargement site. We question the advisability of trying to place new acreage under irrigation when available water supplies can scarcely accommodate presently irrigated acreage, even with planned conservation and new storage. New storage does *not* create water. It only aids in timing the flows. Additional irrigated land should be tied to the development of water supplies earmarked for that purpose, specifically on-reservation storage development.

We support the development of the Wymer storage site as an alternative to Bumping Lake Enlargement. Wymer is a relatively low elevation off-river storage site located in a desert area along the main stem of the Yakima River. The reservoir would be filled by pumping excess flows from the Yakima, primarily during the off-season. Being at low elevation, it is close to irrigation diversion points, thereby promoting efficient flow control.

Storage near the point of application is important because it can prevent wasteful release of excessive flows resulting from efforts to anticipate water requirements days in advance. Advance release is required because of travel time in the river from reservoirs over 100 miles away.

The points of comparison of Wymer to Bumping Lake Enlargement are as follows:

ABILITY TO FILL: Bumping has slightly more than 200,000 acre feet of average annual runoff to try to fill a 458,000 acre foot reservoir. Flows are presently regulated by nature due to melting of the high elevation snowpack which extends to about midsummer and by a 33,700 acre foot reservoir.

Wymer, on the other hand, in its latest presentation, is a 142,000 acre foot reservoir to be filled by excess Yakima River flows. Such flows normally occur during the early spring and frequently during winter because of precipitation at low elevations. This low elevation runoff, uncontrolled, has caused some of the floods which have ravaged downstream areas.

We note that this bill authorizes a study to determine how filling can be accomplished while performing all of the flow requirements. We predict that major mathematic manipulation will be required to accomplish this since practically none of the water now being wasted during the off-season can be saved without a low level reservoir. Bumping is at an elevation far too high to be of any benefit. As for Wymer, it is located to accept excess main stem flows no matter when they occur. Flows past the Wymer site are from a drainage area that produces the lion's share of the total Yakima Basin runoff, whereas the Bumping drainage produces about 6% of the total. Doesn't simple logic indicate that a 6% production cannot regulate the efficient use of the total? Especially when a suitable site is available to the larger area? Please be advised that the Wymer site has been considered at various times for capacities beginning at over 300,000 acre feet, down to its most recent 142,000 acre foot size. It has never been a favorite of the Bureau of Reclamation, perhaps because it was first identified and evaluated by private entities.

GEOLOGIC PROBLEMS: Both sites, Bumping and Wymer, are in rocky canyons. Wymer has an overlay of loose material of 3 to 20 feet thick, thus permitting dam construction directly on bedrock. Bumping, on the other hand, has an overlay of various layers of high permeability sand, gravel and silt up to 250 feet thick. This thickness precludes putting the base of the dam on bedrock or even sealing it off. Seepage from a full reservoir, assuming it will ever fill, would be about 100cfs., according to the Bureau's own geologic report, not the 50 cfs. they claimed just lately. Worse than the seepage rate, through, is the fact that the saturated loose material would be under pressure below the dam. This is the principal ingredient to set up liquefaction should an earthquake occur in the area. It should be noted that the area has experienced earthquakes. Liquefaction is the occurrence of the saturated sand and silt turning fluid because of a sudden jolt of the quake allowing the grains of sand to be totally surrounded by water under pressure. A similar substance is quicksand. Such an occurrence would cause failure of the dam. This is the mechanism that destroyed downtown Anchorage a few years ago.

Below the Wymer site are various flows of lava, each laying more or less horizontally upon the other in a strong, stable position. However, under the center of the Bumping site, two or more flows come together and meet with an uncertain relationship to each other. There is sufficient reason to question exactly what effect the hydraulic loading of a full reservoir (again assuming it will fill) would be and whether the loading alone may trigger an earthquake due to minor shifting of the lava flow formations.

We call your attention to the fact that the community of Goose Prairie is about 2 miles downstream from the Bumping site. We are not satisfied that the Bureau of Reclamation will put monitoring devices in the new dam because there may be only one warning, seconds before failure. We also call attention to the failure of Teton Dam where warnings were expressed in engineering documents but construction proceeded anyway.

MITIGATION: The Wymer site requires little or no mitigation because it contains no old growth timber and very little wildlife. Bumping, on the other hand, supports many large game animals, fur bearers of several species, plus eagles, osprey and many varieties of smaller birds. The Washington State Game Department has stated that game is lost when their habitat is destroyed. The bill calls for mitigation and enhancement. We doubt whether this can be accomplished and we have no knowledge of any case where funds for wildlife mitigation were authorized, spent and verified to have had a positive result.

Old growth timber mitigation is something of a myth because to mitigate is to replace or otherwise make less painful. If you have two of something precious and one of them is destroyed, is it really less painful if the remaining one is not destroyed? The loss is just as painful. Such is the case with the old growth timber at Bumping. It would take centuries to replace, especially at the high altitude of Bumping, even if land were made available.

One of the areas at the Bumping site, designated to supply sand and gravel for construction, is now used by kokanee trout for spawning. The kokanee are genetically sockeye salmon which became landlocked when the existing Bumping dam was built in 1910. They thrive in the lake, though they seldom grow large. These fish will lose much of their spawning habitat to the dam builders. How will this be mitigated or enhanced? I can hardly wait to hear the answer.

We observe that the Bureau's most recent map of endangered species sightings does not include 2 spotted owl sighting locations within the area to be flooded.

STORED WATER USAGE: We observe in the recently distributed Bureau of Reclamation hydrographs that annual withdrawals from storage anticipated at Bumping Lake Enlargement vary from about 20,000 acre feet to about 180,000 acre feet. Only 4 years of record would exceed this range, one of which was the infamous non-shortage year of 1977 which ended with huge volumes to carry over - the result of erroneous Bureau forecasting. We further observe that these storage withdrawals could, assuming good water management, be attained with a reservoir at the Wymer site, properly sized and managed.

RECREATION: We observe in the Bureau's most recent dissertation on Bumping Lake Enlargement that peak river flows will be maintained throughout the summer recreation season. The magnitude of these flows will eliminate recreational use of the river and preclude any possible rehabilitation of anadromous fish spawning habitat in the Bumping River and probably in the Naches River as well. These effects are in addition to the destruction of existing facilities such as 13 summer home sites, a marina, a public boat ramp, at least 6 formal campgrounds, and dozens of informal campsites, plus many miles of uncharted off-road vehicle trails which are outside of the Wilderness Area boundaries.

Thank you for this opportunity to comment.

STATEMENT BY DAVID R. CONRAD, WATER RESOURCES SPECIALIST, FRIENDS OF THE EARTH

Mr. CONRAD. Mr. Chairman, as you know, Friends of the Earth, the organization that I'm representing here today has for many years been deeply involved in the water resource issues involving the Yakima River Basin in the State of Washington. We've also delivered to the committee staff a statement from Director of Friends of the Earth Northwest Office, David Ortman, which we would like to offer for inclusion into the record, and which details a number of our concerns about S. 2322.

Mr. Chairman, I would like to briefly a joint statement of seven national conservation organizations and two state-wide Washington conservation organizations who are opposed to S. 2322 as introduced. Our opposition to the bill arises from several concerns, but particularly from the bills' authorization of the new dam on the Bumping River. The decision to pursue new water supply at the Bumping site, we believe, is unacceptable from an environmental impact standpoint and certainly without sufficient justification to be authorized at this time, in advance of full environmental reviews and without the thorough analysis of alternatives that Congress should require of the Bureau of Reclamation in advance of any such large water development.

With regard to the Bumping Lake enlargement, the feasibility report issued by the Bureau for the Bumping River Dam in 1976 was not prepared under the full Water Resource Council principles and standards that were in effect at the time. The EIS was inadequate in our belief and it did not properly identify alternatives to the construction of a new dam on Bumping River. The EIS still remains unacceptable in our opinion, as a decision document for Congress.

In addition, the Bureau has now prepared an EIS on the Yakima River Water Enhancement Project proposals. Impacts on wetlands and wildlife from additional new irrigation in the Basin and from projects such as canal lining haven't been adequately addressed.

The Bureau of Reclamation has identified approximately three square miles of mixed conifer old growth forest habitat in the upper Bumping River drainage that will be lost due to construction of a new dam, much of which is adjacent to the William O. Douglas Wilderness area. Such a permanent loss of old growth forest is an unacceptable adverse impact.

One concern we have, Mr. Chairman, is that water conservation studies have not been carried out on all the Basin's irrigation's districts. Conflicts with the 1945 Federal District Court consent decree and quantification of existing water rights have not been resolved completely in the bill.

Also, we would just point out that the Northwest River's protected areas program in the State of Washington, now before the *Power Council* has the stretch of the Bumping River that would be proposed for development in a protected status from dam development for hydroelectric generation. It would not make sense for Congress to approve a nonhydrodam in a proposed protected area, in our opinion.

Finally, Mr. Chairman, the bill would in some ways undermine recent policy decisions by the Bureau of Reclamation for 1987. But the Bureau of Reclamation must change its primary orientation from one based on Federally supported construction to one based on resource management.

We are encouraged by the efforts that are being made in the area of water conservation in the bill, but feel at this time that the authorization for a new dam on the Bumping River is simply unwarranted. Thank you, Mr. Chairman.

[The prepared statement of Mr. Conrad follows:]

JOINT STATEMENT OF ENVIRONMENTAL CONCERN BY A COALITION OF ENVIRONMENTAL AND CONSERVATION ORGANIZATIONS

Friends of the Earth
National Audubon Society
Sierra Club
National Parks and Conservation Association
Izaak Walton League
Environmental Policy Institute
Washington Wilderness Coalition
North Cascades Conservation Council
The Wilderness Society

Regarding S. 2322, a bill to authorize a new dam on the Bumping River, within the Yakima River Basin, WA, and for other purposes.

Presented by David R. Conrad
Water Resources Specialist, Friends of the Earth

Before the Subcommittee on Water and Power
of the Senate Energy and Natural Resources Committee

Washington, D.C.
28 June 1988

The Yakima River Basin Project in Washington State has suffered from over-allocation of water rights by the State of Washington, poor irrigation practices and a devastating loss of anadromous fish.

The Yakima River Basin covers approximately 6,100 square miles in south-central Washington, of which about half of the upper watershed lies within the Wenatchee National Forest. Up to one-half-million spring Chinook salmon once utilized the Yakima River and tributaries, but dams built by the Bureau of Reclamation in the basin, and dams built by the Corps downstream, have reduced these runs to a remnant. In addition, old growth forests continue to decline in acreage as private and public lands continue to be cut over.

S. 2322, as introduced, would authorize the construction of a new dam on the Bumping River. Despite having some good elements related to water conservation, a large number of unresolved issues have not been adequately addressed in this bill.

* The feasibility report issued by the Bureau for the Bumping River dam in 1976 was not prepared under the full Water Resource Council's Principles and Standards in effect at the time. The environmental impact statement was inadequate and it did not properly identify alternatives to the construction of a new dam on the Bumping River. The EIS remains unacceptable as a

decision document for Congress.

* In addition, the Bureau of Reclamation has not prepared an environmental impact statement on the current Yakima River Basin Water Enhancement Project proposals. Impacts on wetlands and wildlife from additional new irrigation in the basin and from projects such as canal lining, have not been adequately addressed.

* The Bureau of Reclamation has identified approximately three square miles of mixed conifer old growth forest habitat in the upper Bumping River drainage that would be lost due to construction of a new dam, much of which is adjacent to the William O. Douglas Wilderness Area. Such a permanent loss of old growth forest is an unacceptable adverse impact.

* Water conservation studies have not been carried out on all the basin's irrigation districts. Conflicts with the 1945 Federal District Court Consent Degree and quantification of existing water rights have not been resolved in the bill.

* According to the Northwest Rivers Protected Areas Program for Washington State, now before the Northwest Power Planning Council, this stretch of the Bumping River would be protected from dam development for hydroelectric generation. It would not make sense for Congress to approve a non-hydro dam in a proposed protected area.

Finally, this bill, as introduced by Senators' Adams and Evans of Washington, would undermine recent policy decisions by the Bureau of Reclamation in 1987 ". . .that the Bureau of Reclamation must change its primary orientation from one based on federally supported construction to one based on resource management." For this and the reasons listed above, we are opposed to S. 2322, as introduced.

David R. Conrad
Water Resources Specialist
Friends of the Earth

Brock Evans
Vice President
National Audubon Society

Charlie Raines
Regional Vice-President
Sierra Club

Destry Jarvis
Vice President
National Parks and Conservation Association

Maitland Sharpe
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Izaak Walton League

Brent Blackwelder
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Environmental Policy Institute

Kristen Shepherd
Administrative Assistant
Washington Wilderness Coalition

Patrick Goldsworthy
Chairman
North Cascades Conservation Council

Sydney Butler
Vice President for Conservation
The Wilderness Society

STATEMENT OF BROCK EVANS, NATIONAL AUDUBON SOCIETY

Mr. **Evans**. Thank you, Mr. Chairman. I'm sorry I have no written statement. I've been in the Northwest almost all the last two weeks and I flew out all night and most of this morning to come to this hearing. My purpose was, among other things—last weekend I spent in the proposed reservoir pool, the Bumping Lake enlargement area. I walked almost all. I went through the forest, the ancient forest there, because I wanted to see what was at stake first hand, since one feature of this bill may lead to satisfaction of some of the water claims through what to us is a very important public resource and that's the recreation lands around Bumping Lake.

While I walked into that forest, Mr. Chairman, and I was frankly not prepared for what I saw. It was an awesome tract of ancient forest. We have been calling it old growth forest for old trees. It is big old trees, Mr. Chairman and it's extremely impressive. It's one of the rarest things we now find anywhere in the Northwest, a large stand of huge trees on a flat area, very, very accessible, among the largest Douglas Fir I've ever seen and the largest Western Red Cedar I have ever seen, the largest lodge pool and spruce and white pine I've ever seen.

I would like, if I could, Mr. Chairman, to share these pictures I brought back with me so that you could get the flavor of it too. All of these pictures were taken in the area to be flooded. I have seven more rolls of film I'm getting developed, but this is just for starters and we would like to come back to that later. I felt it was important to do this and see this, because as you know, we have been opposed to the Bumping Lake enlargement feature of the bill for a long time.

I think these pictures begin to show us that the measure of the sacrifice is that one very important and rare environmental resource, that is ancient forest, to resolve the other problems, and we agree there are real other problems with the fisheries and the water claims and water rights. That's why we have to oppose the Bumping Lake feature of this otherwise very commendable legislation.

I'm hopeful, we are all hopeful that there may be other ways to resolve it. One of my companions on this trip was a forester. Another one was a person, a water engineer, who works a lot in fisheries and in this part of the world. He felt there were certainly other ways we could resolve the fisheries issues, and I would request that we might be able to submit more evidence on this point before the hearing record closes, Mr. Chairman.

To sum up, we feel a very, very, important environmental resource is at stake here. It's a tract of ancient forest, which is very, very rare and in my opinion, unique in some specific ways. It's a very important one. We don't think it's necessary to destroy this kind of treasure to resolve the other problems. We would like to work with all parties and be included to resolve the problem without doing this.

Thank you.

Senator **Evans**. Thank you very much.

Richard Rutz.

STATEMENT OF RICHARD RUTZ, MOUNTAINEERS, SEATTLE, WA

Mr. RUTZ. Thank you, Mr. Chairman. I'm here today representing the Mountaineers, which is the largest outdoor recreation and conservation organization in the Northwest, with over 11,000 members. Our members have been interested in and followed the Yakima Basin enhancement project since the time of its inception and have been concerned about the Bumping Lake proposal for even longer than that.

I will summarize my remarks into two or three points, first, that the Mountaineers is extremely supportive of the water conservation measures that have been discussed and are pointed to in the bill. However, if there are to be cost efficiency calculations made by the Bureau of Reclamation, we believe that very clear direction should be given to them. Frankly, we don't trust them and feel that they have no history to deserve that trust. If such direction were given, we don't think many of them would be implemented.

Second, we are strongly opposed to the Bumping Lake enlargement. The impact, as Mr. Evans, Brock Evans and others have eluded to, we find unacceptable. There are other storage projects, as Loren has talked about that conceivably could meet needs. At any rate, the full consideration should be done and we don't believe that these alternatives to a Bumping Lake have, in fact, been satisfactorily examined.

Third, we are very supportive of the Government fulfilling its responsibilities to the Confederated Tribes and Bands of the Yakima Indian Nation. However, we do not believe that the Bumping Lake Project itself is a necessary component to meeting or fulfilling those responsibilities. Thank you, sir.

Senator EVANS. Thank you.

We have some interesting pictures and I appreciate the pictures, Brock, that you brought. There are also some pictures here that have been introduced that show the flows below the dams on the Yakima River during the fall migration period of some of the fish, including—you can see it all here, but you can't see much water, in an environmental way, and here are fish killed by dewatering below the Sunnyside Dam, Prosser Dam, on the Yakima extreme low flows, virtually no flow whatsoever below that in fall or spring.

That's an environmental consideration too, along with trees, and I wonder if you're keeping in mind the broad needs of the environment, as well as the somewhat narrower needs.

Mr. Rutz, you mentioned that you don't believe the Bureau of Reclamation's figures. Why should the Committee believe your statement when you say we believe that the reservoir will, in fact, not refill annually, perhaps as infrequently as once in three or four years, and certainly not in dry years. Why should we believe that?

Mr. RUTZ. Well, as the testimony I have submitted states, the assumptions that the Bureau has utilized in constructing its curves have never been adequately documented so that they can be examined and evaluated.

The curves that can be developed can generate numbers of that sort, depending on the assumptions that are utilized. I personally can't speak further to that, it's not my particular area of expertise. There are others who can respond to that in more detail.

Senator Evans. It would be helpful if you could have them submit for the record any information they have that would substantiate the statement, so that we do have that on the record.

Mr. Rutz. Yes, sir.

Mr. Evans. Senator, could I respond on the point of the trees you raised? I thought it was a very good one. I guess my response would be that those big trees are fixed in place, they can't be replaced anywhere else once they are gone. Water can come from other places and we have all along supported the Wymer Project, for example. The water engineer I mentioned felt that there were other ways, as well, and we don't want that to happen to the fish either, but I think in one case the trees are going to lose it for sure and you can't get it back and the other place, if it's a matter of water, we want to work with them and we think that there are likely to be other alternatives and we hope that there will be.

Senator Evans. That's a good point. Trees are a renewable resource. Maybe old and big trees take a long time to grow old and big again, but they are a renewable resource also.

Mr. Evans. Our forester said some of those trees were 1,200 years old up there.

Senator Evans. They're still renewable. I'm not suggesting that that is a thing we ought to be doing either, except that isn't it true currently that the—I think there are about 7,000 acres of old growth forest outside of the William O. Douglas Wilderness and in the general vicinity of Bumping Lake, none of which are protected at the current time.

Mr. Evans. That's correct. There's another thing I found out, Mr. Chairman when I was there, that the big trees are almost all within the reservoir taking line. When you get out of that, you get more forest that is not. It's a very different kind of forest, much smaller trees, scragglier, and so on. That's true. This has had to be a special resource that no one knew much about. In a way it reminded me very much of the Big Beaver, the big cedars on the Big Beaver and Highrise Dam issue that you remember that no one knew about and finally happened to see and that became an important question, as you remember.

Mr. Strain. Senator, within the next few days, the Subcommittee will receive some figures from an organization called Friends of Bumping, which I have just lately found out about and they have analyzed the Bureau's latest figures and charts and you will see there what someone who has more expertise than I have to say about how these were derived and how they fail to come up to measure.

Senator Evans. That would be very helpful. It seems to me, apparently the USGS, the Geological Survey has done an evaluation of the Bureau of Reclamation's analysis and concurs in their analysis. I think not just the Bureau but another, I think, quite competent government organization has concurred in that and so it would be helpful to get any information that would lead us to really try to iron out those problems.

We all want to work from the basis of facts as well defined as we can, recognizing that they're not always to come by either. Even the best of designers make mistakes. They were distinguished designers that built the Tacoma Narrows Bridge the first time, equally distinguished ones that built it the second time, but they had the advantage of knowing what happened the first time and so we want to avoid making mistakes. But, I think we are in a serious environmental position. The needs for water, which are competitive, which is settled by litigation will merely mean that there are winners and losers. The losers could very well without any enhancement be the fish resource which has been, I would guess, more severely damaged than the timber resource, in terms of what was once there, compared to what is now there and so we've got some competing environmental concerns and consequences, as well as the economic consequences that we all have to try to deal with.

Hopefully, we can find an answer that is worthwhile and yet minimizes those consequences. I have tried to point out, as you heard earlier on, that we appear to be getting close to a resolution of some very complex and sometimes conflicting claims on the demand side. And, if we get to that point, then we have a more definitive figure that we have to deal with on the supply side.

And, while I am the greatest fan, I think from past experience shows that conservation, trying to do things as efficiently and as well as we can, is sometimes more complex in water management than it is in electrical management because sometimes the water, if you put it on the farms more efficiently, then there is less water in the runoff and the ground water table to be utilized downstream, which means you have to divert more water rather than less, in order to provide for those farms, and so there are complexities that are difficult to work with.

I know, Mr. Strain, you are saying that there would be some analyses done by Friends of Bumping Lake. Would that include their analysis of why they believe that the reservoir would not fill, or would not meet the requirements?

Mr. STRAIN. Yes. It is aimed, specifically, toward that end.

Senator EVANS. It is a puzzle we will have to deal with. I think the Yakima Indian Nation has been among the strongest proponents of Bumping Lake and probably have the most to lose if it doesn't fill, and so it's important that we try to get as good and accurate information as we can on that subject before we go ahead, and there will be two weeks for any further testimony and it will be very helpful.

I think as time goes on, it's my hope that we can continue this effort with the various groups who are involved. It appears to me that we are moving faster or getting further ahead on a resolution of the demand side, and the supply side will have to come along in parallel with it.

If there is an adequate and good and responsible alternative to Bumping Lake, of course I think there is the desire to move toward that. Probably also it has to be cost effective and that's another thing that we have to keep in mind. You can put a solution almost anywhere if you want to spend the money at it. And the question is, whether that is something Congress will need to do.

I don't think I have anymore questions, currently. I appreciate very much your willingness to come and to testify. I believe in the hearing today we have at least laid out the various elements that must be considered if we are to reach a resolution of this problem, hopefully, yet during the remaining weeks of this Congress. I commend everybody for their contributions and what has been done so far and I hope that everyone will continue to work in these next few weeks to see if we can't come together on a proposal that that will at least have the maximum support possible. If we got to a proposal of this complexity with unanimous support, I would scare myself.

Thank you very much, and with that this hearing is adjourned.

[Whereupon, at 6 p.m., the hearing was adjourned.]

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